

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF ALABAMA  
EASTERN DIVISION

3 RICHARD P. METTKE,

4 Plaintiff,

5 vs.

6 TOUCHNET INFORMATION SYSTEMS,  
7 INC.,

8 Defendant.

**ORIGINAL**

) No. 98-PT-596-E  
)  
)  
)  
)  
)  
)

9 THE DEPOSITION OF DANIEL J. TOUGHEY, produced,  
10 sworn and examined on behalf of the Plaintiff pursuant  
11 to Notice, between the hours of eight o'clock in the  
12 forenoon and six o'clock in the afternoon of Tuesday,  
June 16, 1998, at the law offices of Spencer, Fane,  
Britt & Browne, 1400 Commerce Bank Building, 1000  
Walnut, in the City of Kansas City, in the County of  
Jackson and State of Missouri, before me,

13 LYDIA HURLEY, RPR  
14 BOWEN MOTTER REPORTING  
911 MAIN, SUITE 1930  
15 KANSAS CITY, MISSOURI 64105

16 a Notary Public in and for Jackson County, Missouri,  
17 in a certain cause now pending in the United States  
18 District Court for the Northern District of Alabama,  
Eastern Division, wherein RICHARD P. METTKE is  
Plaintiff and TOUCHNET INFORMATION SYSTEMS, INC., is  
Defendant.

19 A P P E A R A N C E S

20 For the Plaintiff: Tobor & Goldstein  
21 1360 Post Oak Blvd., Ste 2300  
Houston, Texas 77056-3023  
22 By Mr. John T. Polasek

23 For the Defendant: Spencer, Fane, Britt & Browne  
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By Mr. Richard P. Stitt



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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the parties herein that presentment to the attorneys of record of a copy of this deposition shall be considered submission to the witness for his signature within the meaning of Federal Rules of Civil Procedure; but shall in no way be considered as a waiver of the witness' signature, and is to be signed at any time before the time of trial; and if not signed by time of trial, may be used with the same force and effect as if signed.

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DANIEL J. TOUGHEY,

a Witness, of lawful age, being produced, sworn and  
examined on behalf of the Plaintiff, deposeth and  
saith:

EXAMINATION

BY MR. POLASEK:

Q Mr. Toughey, would you go ahead and state your  
name for the record, please?

A Daniel J. Toughey.

Q Mr. Toughey, have you ever been deposed before?

A No.

Q I take it you have had an opportunity to talk to  
Mr. Stitt about what we are going to do here  
today?

A Yes.

Q Okay. As you are aware, the court reporter gave  
you an oath and it is the same oath that you would  
take if you were testifying down at the  
courthouse. Do you understand that, sir?

A Yes.

Q You understand the same pains and penalties of  
perjury apply here just as they would down in  
front of the judge?

A (The witness nodded his head.)

Q Is that a yes?



1 A Yes.

2 Q One of the more difficult things for the court

3 reporter to take down is nods of the head, the

4 uh-huhs and the huh-uhs and that sort of stuff.

5 If you could answer yes or no or give an

6 explanation as needed, that would be appreciated.

7 A Okay.

8 Q Excellent. It is my understanding that you are

9 employed with TouchNet Information Systems, Inc.;

10 is that correct?

11 A Yes.

12 Q And what is your position with TouchNet?

13 A I am president.

14 Q President. I guess that means you are really not

15 employed, you are the boss?

16 A Or -- yeah, I'm the boss, but definitely employed.

17 Q Okay. Let me show you a copy of the deposition

18 notice for a 30(b)(6) representative of TouchNet.

19 (EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION.)

20 Q (By Mr. Polasek) Mr. Toughney, I am going to show

21 you this deposition notice and ask if you have

22 seen this notice before?

23 A Yes, I have.

24 Q Let me represent to you that this is what is

25 referred to as a 30(b)(6) deposition notice that



1 asks for a party such as TouchNet Informations to  
2 designate a person or persons that have knowledge,  
3 the most knowledge concerning a subject matter  
4 that is set forth in the subject matter list. Do  
5 you understand that?

6 A Yes.

7 Q It is my understanding that you are being  
8 presented here today pursuant to this notice and  
9 you are going to testify to some or all of the  
10 subject matter that is set forth on the list in  
11 the deposition notice; is that correct?

12 A Yes.

13 Q Do you agree to testify on behalf of TouchNet?

14 A Yes.

15 Q Before we got started this morning, Mr. Stitt  
16 referred to another person with TouchNet that may  
17 be presented as a 30(b)(6) representative today.  
18 Do you recall that?

19 A Yes.

20 Q Can you tell me what TouchNet intends to offer his  
21 testimony for?

22 A Dean Vermeire is our chief software engineer, vice  
23 president of software development, and he has been  
24 intimately involved in the development of our  
25 product, our core product since 1991 and will show



1 source code to the development of product and  
2 point out specific things that we think  
3 demonstrate that we were doing much of, if not all  
4 of, what Mr. Mettke's patent refers to as far back  
5 as certainly 1991.

6 Q Okay. So he is going to testify as to the inner  
7 workings of the computer within the terminal?

8 A Yes.

9 Q You have also brought some documents to the  
10 deposition today, and I appreciate that. As part  
11 of the deposition notice, there are two document  
12 request numbers, Nos. 1 and 2. It is on the  
13 second to last page of the deposition notice. Are  
14 these documents responsive -- are these the  
15 documents that TouchNet has that are responsive to  
16 the document request in the deposition notice?

17 A I'm not with you. You said one and two?

18 Q Yes, sir.

19 A Where are you at?

20 Q The second to the last page, right below it is  
21 entitled document request.

22 A Okay. Yes.

23 Q These documents are being produced pursuant to  
24 these two document requests?

25 A Yes, uh-huh.



1 Q I have had a chance to quickly look through it and  
2 by no means have I had an opportunity to read all  
3 the documentation you have provided to me, but I  
4 would ask that you take a look at document request  
5 No. 2. No 2 asks for credit card receipts or  
6 other accounting records concerning payment for  
7 use of the internet kiosk terminal by users of the  
8 terminals referenced in subject matter categories  
9 No. 1 and/or 2.

10 A Okay.

11 Q Does TouchNet have any documentation that shows  
12 that a user of a public access terminal, what I  
13 would refer to as a kiosk terminal, that shows  
14 that they have been charged for their on-line time  
15 while they are accessing a commercial on-line  
16 service provider?

17 A No, we don't.

18 Q Okay. What terminals does TouchNet manufacture  
19 currently?

20 A We manufacture a TF900. But just to kind of help  
21 you out there, they are all the same. It is not a  
22 question -- they all have the same basic set of  
23 components. They all have the same basic  
24 underlying software. So the version, whether it  
25 is a TF1000, 700, 750 or 900 is not -- it is just





1 a designation really of the metal that surrounds  
2 the components.

3 Q Okay.

4 A So we just kind of -- we go broad. We just go TF  
5 terminal. That would cover the broad scope of our  
6 service terminal.

7 Q Okay. Does the TF900 have a credit card reader  
8 swipe device?

9 A Yes.

10 Q And that's coupled to the central processing  
11 unit --

12 A Yes.

13 Q -- within the terminal, correct?

14 A Correct.

15 Q The purpose of the credit card swipe is to accept  
16 payment for use of the terminal, correct?

17 A Correct.

18 Q Okay.

19 A Also for identification purposes.

20 Q Okay. When we talk about for use with the  
21 terminal --

22 A Uh-huh.

23 Q -- what sorts of uses is a user billed for using  
24 the TF900?

25 A They are billed for trip routing information.



1 They are billed for buying prepaid phone cards.

2 They are billed for buying a copy of a transcript.

3 They are billed for sending a fax. They are

4 billed for making photocopies. They are billed

5 for buying flowers. They are billed for buying

6 tickets. Those are the ones that come to mind.

7 Q Are they billed for their access to a commercial  
8 on-line service provider such as Prodigy or AOL?

9 A No. They are billed for commercial on-line  
10 services such as trip routing and other types of  
11 on-line services.

12 Q Okay. You characterize billing for trip routing  
13 services or for trip routing information as a  
14 commercial on-line service?

15 A Yes.

16 Q All right. A user of the TF900, is this person at  
17 all billed for use of the terminal if he is using  
18 it to access Prodigy or another on-line service  
19 provider?

20 A Not currently.

21 Q Not currently.

22 A You say another on-line. I mean, again, a lot of  
23 definition needs to go into on-line. If you say  
24 Prodigy or America On-Line, if that is what you  
25 are referring --



1 Q Prodigy, AOL, CompuServe?

2 A Major.

3 Q Major on-line.

4 A Major commercial on-line services?

5 Q Service provider companies.

6 MR. STITT: Counsel, so we are clear  
7 here, can you define for us so Mr. Toughey knows  
8 how to respond what on-line includes to you? Are  
9 you limiting it to internet service providers?

10 MR. POLASEK: Yes. That is probably the  
11 best way to put it.

12 Q (By Mr. Polasek) Have you read Mr. Mettke's  
13 patent?

14 A Yes.

15 Q And do you recall seeing within his patent he used  
16 the phrase commercial on-line service provider?

17 A Yes.

18 Q Okay. When he used that term for the first time,  
19 he described it as Prodigy, CompuServe, America  
20 On-Line and Delphi?

21 A E-World as an example.

22 Q Right. Okay. I would consider those as internet  
23 commercial on-line service providers.

24 A I would say that is true now, yes. But I mean  
25 back in 1991, 1992, America On-Line had nothing to



1 do with the internet, neither did Compuserve. So,  
2 yeah, I agree that today that's true, but back a  
3 few years ago that is not true.

4 MR. STITT: Just for the record,

5 Counsel, if we could point out that the claim of  
6 Mr. Mettke relates to commercial on-line services.  
7 MR. POLASEK: I am fully aware of that,

8 you know, when we go, when we have a markman  
9 hearing that the judge may be asked to construe  
10 that if need be.

11 Q (By Mr. Polasek) Going back to our discussion  
12 about commercial on-line service providers, if we  
13 use that term in the context of an internet  
14 service provider such as AOL --

15 A Uh-huh.

16 Q -- or Prodigy, it is my understanding, first of  
17 all, that the TF900 is -- you are able to access  
18 the internet through an internet provider such as  
19 Prodigy?

20 A Yes, yes.

21 Q Okay. Now, is a user, are they billed for their  
22 access to Prodigy?

23 A No.

24 Q Are there any other on-line service providers such  
25 as Prodigy that they can access through the TF900?



1 A Again, I think you do a lot better with the TF  
2 terminal, okay, because, I mean, I can answer no  
3 to virtually everything on the TF900 because it is  
4 a new product. But anyhow, TF terminal, just any  
5 one of our terminals with our software, not  
6 currently, the answer to your question.

7 Q Are there plans to bill users for their access to  
8 the internet through a service provider such as  
9 Prodigy?

10 A Yes.

11 Q When does TouchNet expect to employ or put out for  
12 public use a terminal in which you can access  
13 Prodigy and in which the user is billed for that  
14 access?

15 A We don't have any specific plans, I guess, to  
16 access Prodigy.

17 Q Or other on-line service provider?

18 A Like America On-Line?

19 Q Yes.

20 A Again, no specific plans to have a dedicated  
21 interface to America On-Line. We currently have  
22 equipment that is installed, systems that are  
23 installed that a user can access the internet.

24 Q Correct.

25 A Okay. And they can decide where to go, what world



1 wide web sites they would like to go to. And I  
2 believe now America On-Line has a world wide web  
3 site and a dedicated interface through a dial-up  
4 system, so they have two different paths, if you  
5 will. And so I guess ours is the latter, we will  
6 provide access to the internet and let somebody  
7 decide where they want to go.

8 Q Okay. Let's back up. I was asking you questions  
9 that relate to a user of the terminal being billed  
10 for access to the internet through the use of a  
11 commercial on-line service provider such as  
12 Prodigy or AOL, CompuServe.

13 A Yeah.

14 Q And you said that TouchNet does not currently use  
15 or have a terminal that does that.

16 A Correct.

17 Q But you did indicate they have plans to do so?

18 A Correct.

19 Q Okay.

20 A But not necessarily through America On-Line as a  
21 internet service provider.

22 Q Okay. Then how is it that --

23 A You will go through a variety of different  
24 internet service providers so just -- Earth Link,  
25 for example, they provide -- let's say they



1 provide internet dial tone basically, right?

2 Q Okay.

3 A And our systems then will -- as if you are the  
4 user, will ask you where you want to go.

5 Q Okay.

6 A Or highlight different destination points on the  
7 world wide web.

8 Q But if I am the user --

9 A Uh-huh.

10 Q -- I am going to have to put my credit card in  
11 there and pay for that access, correct?

12 A That is the plan.

13 Q Okay. And what I am trying to get at is, do we  
14 have the terminal and the software set up to do  
15 this? Do we expect to roll out a terminal this  
16 year, next year --

17 A Yes.

18 Q -- or when?

19 A Very soon.

20 Q At the present time, TouchNet has not rolled out  
21 one of those terminals though?

22 A Not that charges for the service.

23 Q Okay. When you say very soon, can you be more  
24 specific?

25 A Sometime in the next 30 days. But, again, it is



1 not -- it is not for America On-Line, CompuServe  
2 or any of those specifically. It is just pure  
3 internet access.

4 Q So the user is going to be billed for access to  
5 the internet?

6 A Correct, right, for the purpose of going to world  
7 wide web sites. Now, I would like to make a  
8 distinction as well, which is we have two facets  
9 to our business, maybe more than two but relevant  
10 to this conversation.

11 One is, as you have seen from some of the  
12 contracts, business relationships we have in  
13 place, we sell our systems to other third parties  
14 and we license our software to them and they do  
15 whatever they want with them. They develop  
16 software for them, they hire us to develop  
17 software so that their system implements their  
18 business plan.

19 Q Okay.

20 A Okay. We also have, which is a much smaller part  
21 of our business, a number of units, self-service  
22 terminals that we own ourselves, we haven't sold  
23 to anybody, we own and operate them in public  
24 locations. And so when I say we are getting ready  
25 to introduce payment for accessing the internet,





1 that's only on our own system that we control and  
2 own. What our business partners do is up to them.  
3 They may -- they may want to, they may not. It  
4 depends on what their objectives are. So I assume  
5 we are talking more about the units that we own  
6 and control.

7 Q Well, that is a good point. Let me ask you this.

8 A Yeah.

9 Q Do you know if any of your customers in which your  
10 company has sold or leased a terminal to, have  
11 they charged a user of the terminal for access to  
12 the internet?

13 A Not for access to the internet.

14 MR. POLASEK: I'm going to ask the court  
15 reporter to mark the Defendant's Answers to  
16 Plaintiff's Interrogatory No. 1 as I believe it is  
17 Exhibit 2.

18 (EXHIBIT NO. 2 WAS MARKED FOR IDENTIFICATION.)

19 Q (By Mr. Polasek) Mr. Toughey, I am going to hand  
20 to you the document that has been marked as  
21 Exhibit No. 2 and ask you to identify it?

22 A This is Defendant TouchNet's answer to Plaintiff's  
23 Interrogatory No. 1.

24 Q Now, I note that you did not sign the verification  
25 attached to the interrogatories, Mr. Murphy did?



1 A Correct.

2 Q But you were listed as one of the persons having  
3 personal knowledge of the answer that is set forth  
4 in this interrogatory?

5 A Correct.

6 Q Can you, to the extent possible, tell me which  
7 portion of the answer that you supplied and which  
8 portion of the answer Mr. Murphy supplied?

9 A Oh, I think Mr. Murphy supplied almost all of it.  
10 I was out of the country at the time.

11 Q If I can refer you to page 2 of the interrogatory  
12 answer, from the middle portion of the page down  
13 towards the bottom -- actually, why don't we, for  
14 the sake of completeness, let's look at the entire  
15 page. It is my understanding based on this  
16 portion of the answer that TouchNet contends that  
17 what it had marked as Exhibit 1, which is the  
18 TouchFax network document, that TouchNet contended  
19 that that document described what is set forth in  
20 Mr. Mettke's patent in claim 1?

21 A I think, yes. I mean, a combination of  
22 description of the terminal itself and all the  
23 different peripheral devices that were put  
24 together under the terminal together with the --

25 MR. STITT: Excuse me for one moment,



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1 counsel. Has that been introduced into evidence?  
2 Could we have that and let my client have a copy  
3 of it to --

4 MR. POLASEK: I will certainly do so.  
5 But you can continue with your answer.

6 THE WITNESS: I was going to say there  
7 is really two components, I believe, to the answer  
8 to that, which is one up here in this 1991  
9 document we show TF750 public terminals,  
10 telephones, conventional fax machines as methods  
11 for user interface to a variety of information  
12 services which we call the electronic library.  
13 And those information services can be stored in a  
14 lot of different locations, including our own  
15 facility, or they could be located in a computer  
16 database for official airline guides or USA Today  
17 and CompuServe data or Prodigy or all of those.

18 So the public terminal interfacing with these  
19 computer databases, yes, I think given the fact  
20 that all of our public terminals have always had  
21 credit card readers on them and we have always had  
22 users swiping credit cards for the most part on  
23 most of the services offered on the machine, I  
24 think, yes, it does. It demonstrates that this  
25 was -- I mean, this was definitely public



1 knowledge we were out there marketing this as far  
2 back or before 1990.

3 MR. POLASEK: Why don't we get the court  
4 reporter to mark that as Exhibit 3 since we are  
5 talking about that document.

6 (EXHIBIT NO. 3 WAS MARKED FOR IDENTIFICATION.)

7 Q (By Mr. Polasek) Mr. Toughey, we are talking  
8 about the document itself, Exhibit No. 3, the  
9 network topography diagram. The document itself  
10 does not disclose the use of a credit card swipe,  
11 does it?

12 A Well, I mean, there is reference to it here  
13 certainly, Mr. Polasek. There is upload credit  
14 card billing information listed here. There is --  
15 these are obviously bad icons of -- maybe not,  
16 they are probably good icons of a TF terminal, but  
17 the card swipe is that box in the right where the  
18 card swipe has always been.

19 Every TF terminal has a card swipe on the  
20 right-hand side and a telephone on the left-hand  
21 side. So this certainly together with anything  
22 else that we had as marketing material or even  
23 contracts where we specify the components that go  
24 into our system I think certainly does bring the  
25 credit card element into it.



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1 Q Let me ask you, you referred to the phrase upload  
2 credit card billing data. Can you explain that  
3 for me?

4 A Yes. The way the software in the terminal, the  
5 public terminal was designed is that the credit  
6 card information, the transaction log of what took  
7 place on that machine at any given point was  
8 stored on the hard drive until there was a remote  
9 management session, if you will, from Kansas City  
10 or one of our customers from wherever location  
11 they wanted to operate their central location  
12 from. They would call the equipment, they would  
13 get the transaction log and inside the transaction  
14 log would be all the credit card charges for any  
15 given period of time since the last session, if  
16 you will, remote management session.

17 Q Okay. But --

18 A But at the same time, the terminal could be --  
19 each time somebody swiped a credit card, it could  
20 be with a flag in a configuration file making an  
21 authorization call to any one of the many card  
22 processing, credit card processing firms to  
23 validate that as a good credit card. Once it did,  
24 it would then store that information in the  
25 transaction log for later retrieval.



1 Q That would be on that particular machine?

2 A It would be stored, yes, on that particular  
3 machine.

4 Q If they went to a different machine in another  
5 part of the airport or something, their card would  
6 go through the same validation procedure?

7 A Correct, right, correct.

8 Q This exhibit, Exhibit 3, also references an  
9 on-line interactive database. And the second  
10 bullet point below that, it says, Public - Access  
11 to CompuServe, Prodigy.

12 A Correct.

13 Q This goes back to our earlier discussion, but the  
14 terminal that this document attempts to describe  
15 does not disclose the use of the credit card to  
16 pay for access to CompuServe or Prodigy, correct?

17 A This document doesn't specifically do that.

18 Q And at that time, TouchNet was not -- the terminal  
19 was not set up to charge the user for access to  
20 CompuServe or Prodigy; is that accurate?

21 A Well, at that time, the terminal didn't even have  
22 CompuServe or Prodigy on it. At that time, these  
23 were -- these are ideas of what you could do  
24 because, again, our main business was selling to  
25 third parties our system.



1 Q Okay.

2 A So part of that sales process was to entice our  
3 buyers into what the functionality, what the  
4 capability if they bought TF terminals and put  
5 them all over the world what they would do with  
6 them.

7 Q So you are saying that this was something that  
8 could be done on a TF terminal but had not been  
9 done?

10 A In 1991, correct.

11 Q So obviously if it -- we will leave it at that.  
12 You have referred to this document I think in the  
13 time frame of 1991. And I take it that that is  
14 based on the date at the bottom of the exhibit?

15 A Sure. Based on that and my recollection of using  
16 this document and many versions of it since the  
17 very beginning of the company.

18 Q Okay. Tell me about this recollection of using  
19 the document --

20 A Well -- I am sorry. Did you finish?

21 Q I was going to ask who was this document  
22 distributed to?

23 A Our primary target, if you will, for selling TF  
24 terminals and the management system behind them in  
25 this time period of let me say 1991 through 1993



1 -- 1990 really through 1993 -- was telephone  
2 companies. And so we called on all the regional  
3 Bell companies. We sold a couple. AT&T was our  
4 largest customer during that time period. Sprint  
5 was a customer of ours. GTE was a customer of  
6 ours. And that was our target market. Cintel,  
7 several of these things got merged up or whatever,  
8 but they were the target.

9 Basically, we were making presentations to  
10 phone companies saying the future of public  
11 communication is a platform that has more  
12 capabilities than just voice calls, like your  
13 basic public telephone station does. And this is  
14 the, quote/unquote, value added station here for  
15 lots of different types of communication and  
16 information services. And so that was our -- that  
17 was our main focus from the standpoint of who we  
18 pursued as customers. Of course, there were other  
19 things that came along, but that was who we talked  
20 to every day or tried to talk to every day.

21 Q So is it your testimony that this actual document  
22 was distributed to some of these potential  
23 customers?

24 A Oh, yes.

25 Q Can you identify any specific customers that this





1 was actually given to?

2 A Well, I'm sure that it was given to Southwestern  
3 Bell. I am sure that it was given to AT&T.

4 Q Do you have any records to that effect?

5 A No.

6 MR. POLASEK: Off the record.

7 (Whereupon, a break was taken.)

8 Q (By Mr. Polasek) Referring back to Exhibit No. 3,  
9 it has a copyright date of 1991. Was this  
10 document actually filed and registered with the  
11 copyright office?

12 A No.

13 MR. POLASEK: I think I will have the  
14 court reporter mark the affidavit of Mr. Murphy  
15 and the attachments thereto as Exhibit 4.

16 (EXHIBIT NO. 4 WAS MARKED FOR IDENTIFICATION.)

17 Q (By Mr. Polasek) Mr. Toughey, I am going to show  
18 you what has been marked as Exhibit 4 and give you  
19 an opportunity to look through it.

20 A Can I see the exhibits to this?

21 Q I believe they are attached.

22 A Oh, that is that, okay.

23 Q The reason I kept it together is because I am  
24 going to talk to Mr. Murphy about the affidavit  
25 probably in a little more detail than I am with



1           you and I thought it would be less confusing to  
2           keep all the attachments together.

3           A    Okay. I have reviewed it.

4           Q    Okay. Why don't we start with page 3 of Mr.  
5           Murphy's declaration, Paragraph 9. In Paragraph  
6           9, Mr. Murphy stated that certain TouchNet public  
7           access terminals were operating at various places  
8           within Kansas City, Overland Park and  
9           Independence, Missouri. Those, the terminals that  
10          were being referred to there, they were terminals  
11          in which the user was charged for uses such as  
12          getting flight information, purchasing flowers and  
13          things of that nature, correct?

14          A    They were set up to charge. All of our terminals  
15          were set up to charge. It is just a question of  
16          -- and Dean will, Mr. Vermeire will go into this  
17          more, but the software layer underneath the basic  
18          core of our software has a variety of different  
19          interfaces for programs, user interface programs  
20          above that, if you will, to access.

21                So in this resource layer is credit card  
22          authorization and processing, printing, scanning,  
23          telephone calling and that type of thing. So all  
24          of our systems have this core piece of software  
25          that a high level application can call on. So,



1 for example, it was up to the service above it, if  
2 you will, to decide what they wanted to charge, if  
3 it wanted to charge. Some were not pay-per-use.  
4 Some were advertiser sponsored.

5 We have, for example, ERA, Electronic Realty  
6 Associates in Kansas City. They had a home  
7 database on our equipment. Well, they didn't want  
8 to charge anybody to access the available homes  
9 that were for sale because they didn't think  
10 anybody would pay for that, quite frankly, but it  
11 was more of a marketing tool for them.

12 Q They derived revenue off of the advertising that  
13 was on the terminal?

14 A Yeah. They paid us to put that application, if  
15 you will, on our terminal. And so from an  
16 owner-operator perspective, there was two ways for  
17 us to make money on the terminal. Maybe more than  
18 that, but two, though, that are clear. One, to  
19 charge the user something every time they use the  
20 piece of equipment for a service. The other one  
21 is to get money from the service provider, whether  
22 it be ERA or somebody else as advertising revenue  
23 for making that service available on our  
24 equipment.

25 So there is really basically two revenue



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1 models possible. But our equipment was basically  
2 set up, our software was set up and all of our  
3 equipment had card readers on it, credit card  
4 readers, and it was a question of where we make  
5 our money on this particular service. Are they  
6 paying us, the company, the sponsoring  
7 organization paying us or do they want to have the  
8 user pay us two bucks or three bucks every time  
9 they go into it. They are all set up that way.  
10 That is just a question of going through the menu,  
11 if you will, saying this one might be free, this  
12 one might be pay-per-use, but they all have credit  
13 card services underneath them.

14 Q Okay. These terminals that we are talking  
15 about --

16 A Sure.

17 Q -- where you paid for things such as sending a  
18 fax, photocopies, buying flowers and buying  
19 tickets --

20 A Right.

21 Q -- those are all what I would characterize as a  
22 discrete one0time charge for -- I mean, if he sent  
23 a one page fax, it was X amount of money, right?

24 A Correct.

25 Q If he bought flowers, it depended on what type



1 and --

2 A What boquet.

3 Q At that time, you did not -- did TouchNet also  
4 include a charge for simply accessing the system?

5 A No, no. It was service by service. And there may  
6 be some charges on services and not on others.

7 Q Okay.

8 A And normally, in this particular case, these  
9 terminals had a mixture of -- we had a bunch of  
10 Kansas City Star forms and financial worksheets  
11 and things like that that there were no charge to  
12 the user but the Kansas City Star was paying us  
13 money to be there. So it was just a variety of  
14 different services.

15 Also our system was designed as this  
16 multiservice device that was meant to have a lot  
17 of different services and several different  
18 pricing models in advertising sponsored programs,  
19 depending on what the service providers wanted to  
20 do.

21 Q Okay.

22 A So very important to our concept.

23 Q Now, going back to the terminal that you expect to  
24 roll out within a month or so in which you will  
25 charge for access to the internet, will that be on



1 a per-minute basis or how will that charge be  
2 determined?

3 A It will be for that particular service. It will  
4 be charged on a per-minute basis. There may be a  
5 service charge as well. In fact, there probably  
6 will be.

7 Q Has TouchNet decided what such charges are likely  
8 to be?

9 A Yes.

10 Q Can you tell me? Can you disclose those to me?

11 A I believe it is 35 cents a minute and service  
12 charge we haven't made a full determination. We  
13 might have that on or off for a while. We are not  
14 sure. If we do, it will be in the \$1.50 to \$2  
15 range, but we might not have it on during an  
16 introductory period. In fact, we have had the  
17 service out there free for a while. We have had  
18 the pricing turned off completely in several  
19 locations. But, again, all we have to do is flip  
20 a flag underneath and then it asks for a credit  
21 card and it starts charging for the service.  
22 Again, that is for the systems we own and control.

23 Q Okay. When you say you have had access for free  
24 for a while, what do you mean by "for a while"?

25 A Oh, probably since certainly at the beginning of



1 the year.

2 Q 1998?

3 A Uh-huh. I don't recall if there is any locations  
4 that were turned on free in late 1997, but I don't  
5 really know offhand.

6 Q While we are on the subject of the terminal that  
7 you plan to roll out in the month, in a month or  
8 so, would it be accurate to say that that terminal  
9 in addition to the pay for access to the internet,  
10 it also includes all the features listed on page 3  
11 of Defendant's Answer to Plaintiff's interrogatory  
12 No. 1, Exhibit 2?

13 A Which one are you on now?

14 Q Exhibit 2, the interrogatory answer, page 3.

15 A Exhibit 2. You have a different list than I have.  
16 What are you looking at?

17 Q Okay. Page 3.

18 A Okay.

19 Q Of Exhibit 2.

20 A Okay. There we go.

21 Q And my question was, this terminal that TouchNet  
22 is getting ready to roll out that will have the  
23 pay to access to the internet, does it also  
24 include all the features that are listed on the  
25 bullet points on page 3?



1 A No.

2 Q Which ones will it not have?

3 A It doesn't have access to commercial software to  
4 interface with commercial on-line service Prodigy.  
5 It won't specifically have Prodigy software.

6 Q Okay.

7 A If the user -- if Prodigy has a world wide web  
8 site and the user wants to go there and knows the  
9 address, the URL, they can go to Prodigy. But we  
10 won't have Prodigy PC software loaded on the  
11 terminal. But there will be housing, there will  
12 be a central processing unit, telephone, modem  
13 display, Touchscreen color monitor, credit card  
14 swipte, keyboard, printer. Those are all standard  
15 parts of our equipment. And one other  
16 clarification, it is not -- we are rolling -- I  
17 mean, the systems are out there.

18 Q Right. You are not billing for the access right  
19 now?

20 A Right. The systems are out there. These systems  
21 are out there like that. They have the software  
22 on them and we flip a switch and we start billing  
23 for the service.

24 Q That is software that has been on there since the  
25 beginning of this year; is that accurate?





1 A Or prior to that.

2 Q I thought you had said -- just a few minutes ago  
3 we were talking about access, access to the  
4 internet for free, and you said that had been  
5 available since the beginning of 1998?

6 A There are some that have the software loaded on  
7 and some systems that haven't had the ISDN line  
8 and that type of thing from a connective  
9 standpoint and wasn't providing even access to the  
10 internet.

11 Q Providing no access?

12 A No access to the internet. But the software is  
13 available and the charging component of software  
14 is available. So there is lots, I guess, if you  
15 will, details to try to work out to try to deliver  
16 that service.

17 Q Uh-huh.

18 A But there is no specific -- at this point in time,  
19 in 1998, 1997, there is no specific Prodigy  
20 software loaded on the system. But back in 1993  
21 when we worked out a business arrangement with  
22 Prodigy, prior to the advent of the world wide  
23 web, there was Prodigy-specific code sitting on  
24 our machine to access directly through dial-up  
25 modem their on-line service, just like a user at a



1 PC would.

2 Q Okay. Well, how is it then that this system will  
3 access the internet? What software will it  
4 utilize?

5 A This system will access the internet through a  
6 ISDN connection to an ISP, okay. But we are not  
7 going to -- Prodigy, America On-Line have all  
8 become -- they have their proprietary on-line  
9 services which reside wherever they are and then  
10 they have gateways out to the internet, right?

11 Q Uh-huh.

12 A And we are not using their, if you will, their  
13 proprietary services as our gateway to the  
14 internet. We are going directly to an internet  
15 service provider, such as UU Net, Earthlink.  
16 There is a whole variety of them. And those other  
17 ISP's mentioned, they provide for ISDN  
18 connectivity, which America On-Line or Prodigy or  
19 one of those basically provide for dial-up scanner  
20 modems. And our systems, we use ISDN, so we can  
21 deliver the service faster.

22 Q If you would, take a look at the June 11, '92,  
23 letter and the attachments to that letter that are  
24 also attached to the affidavit of Mr. Murphy.

25 A Yes.



1 Q You are probably the wrong person to ask this  
2 question to, but I noted that the letter was  
3 unsigned. Does TouchNet have any proof that this  
4 letter was actually sent to Mr. Neal Funk at  
5 BellSouth Telecommunications?

6 A I mean, I probably -- I probably am the wrong  
7 person to ask on that one.

8 Q I need to talk to Mr. Murphy?

9 A Uh-huh.

10 Q Okay.

11 A I am sure that he pulled this off his computer  
12 hard drive.

13 Q Have you seen this letter before?

14 A Yes, I believe I have.

15 Q When do you recall seeing the letter?

16 A Back in that time period of 1992, because they  
17 were in negotiations with BellSouth, so there were  
18 several of us that were communicating with people  
19 at BellSouth. And it was very much a -- it was a  
20 key account that certainly all of us were involved  
21 with.

22 Q I take it you are also familiar with the  
23 attachments to this letter of what is referred to  
24 as Appendix A and the third page where it is  
25 titled additional information?



1 A Yeah, this was pretty much standard stuff. I  
2 mean, we put the customer's name in there, but  
3 this was standard language that we used to present  
4 our terminals.

5 Q Okay. I think I know the answer to this question,  
6 but I am going to ask it anyway.

7 A Sure.

8 Q The terminals that are being described in the  
9 attachments, those terminals did not charge for  
10 access to the internet through the use of a credit  
11 card?

12 A You mean this?

13 Q Yes.

14 A There wasn't an internet publicly accessible in  
15 1992.

16 Q Okay.

17 A So the answer to that is no.

18 Q Obviously no.

19 A Right, exactly. Let's put it this way, there was  
20 no on ramp to the internet unless you were  
21 military or --

22 Q University?

23 A Or university, correct. But, I mean, additional  
24 information which is mentioned here, official  
25 airline guides in Prodigy, that is where in that



1 point in time dedicated software had to be written  
2 for or they had to provide us with software to  
3 access on-line services.

4 Q Right. But you are taking a broader view of  
5 on-line services at this point, correct, as  
6 opposed to internet access?

7 A These were the only on-line services available in  
8 1992.

9 Q Okay. Does TouchNet still have either in its  
10 facilities or perhaps in public somewhere a  
11 terminal that does not have the capability to  
12 charge a user for its internet access or have they  
13 all been converted to have the ability to charge  
14 for internet access?

15 A No, they haven't all been converted, no.

16 Q If I wanted to go look at one of those terminals,  
17 what I would characterize as the older terminal,  
18 where would I go to see one?

19 A The ones that we own?

20 Q The ones that you own.

21 A Right.

22 Q I have a feeling I am going to have some time  
23 before my flight and so I thought I might look at  
24 one. Where would I go between here and the  
25 airport?



1 A You could go to -- there's Hy-Vee grocery stores.  
2 That is primarily, in Kansas City here, what is  
3 left of these units that we were putting out at  
4 one point in 1993. There is, I don't know, 15 or  
5 20 or something like that at Hy-Vee grocery  
6 stores.

7 Q How do you spell that for those of us that are not  
8 from Kansas City?

9 A It is H-y --

10 MR. STITT: -- V-e-e.

11 THE WITNESS: -- V-e-e. Capital H and  
12 capital V, I believe. Those have changed somewhat  
13 in what we have on them. Prodigy is no longer on  
14 them because they stopped paying their advertising  
15 revenue. ERA is off of them because they stopped  
16 paying their advertising revenue. And so --

17 Q (By Mr. Polasek) Okay.

18 A -- we have modified the services based on kind of  
19 the realities of that business model.

20 Q Okay. The older terminals that did have Prodigy  
21 access, was Prodigy paying for the right to have  
22 that on your terminal?

23 A Yes, yes. We had a business relationship with  
24 them that that provided dedicated -- we loaded  
25 their software on our system so their subscribers



1           could have dedicated access. And so, in essence,  
2           we were renting them space. And that's how we  
3           kind of viewed the multipurpose public computer,  
4           much like a shopping mall.

5           Q   So a user to have access to Prodigy not only had  
6               to find a terminal that had Prodigy access, it had  
7               to be a Prodigy subscriber?

8           A   There was two tracks, one for subscribers who  
9               already had a log-on password, all of that stuff;  
10              and there was another track, it was substantially  
11              more limited for nonsubscribers so that they could  
12              get a, you know, kind of a taste of the Prodigy  
13              network.

14          Q   Okay. But, again, they weren't charged for access  
15               to Prodigy?

16          A   No. That was a Prodigy decision. All they had to  
17               do was flip a flag if they wanted to, but it was  
18               introduced that way. And then after I think it  
19               was a six-month agreement we had with Prodigy,  
20               after a six-month agreement, they decided they  
21               didn't want to go forward with trying to provide  
22               public access through our systems.

23          Q   Okay. When was that time period?

24          A   That was in 1993. We have got -- whenever the  
25               invoices that you have there to Prodigy stopped,



1 that's when there was no longer a Prodigy  
2 relationship, if you will.

3 Q Okay. Let's talk about the video that you have  
4 provided us with a copy of. I'm sure you have  
5 seen this a number of times?

6 A Many.

7 MR. POLASEK: Richard, I don't know what  
8 you want to do. I think we all know that the  
9 video that we are talking about was marked as  
10 Exhibit 2 in the documentation that you previously  
11 supplied to us. Can we mark this as an exhibit to  
12 the deposition?

13 MR. STITT: Sure. Just go ahead because  
14 we have already marked some of the previous  
15 material.

16 MR. POLASEK: Why don't we do that, mark  
17 this TouchNet video as the next exhibit number.  
18 (EXHIBIT NO. 5 WAS MARKED FOR IDENTIFICATION.)

19 MR. STITT: Counsel, the TouchNet  
20 videotape TouchFax America was just marked as  
21 Exhibit 5. This is a second copy we are providing  
22 to you and it has had timings added to it. And so  
23 to that extent, it differs from the copy  
24 originally provided to you which was an exact  
25 duplicate of the original tape.





MR. POLASEK: Okay. I appreciate that.

Q (By Mr. Polasek) This videotape that has been marked as Exhibit 5, your attorney referred to it as an exact copy of the original. Is it a copy of the master tape that was prepared by I believe it was VPR?

A I don't know.

Q I mean, do you know if any editing has been done to this tape? Or let me say, do you know of an unedited version of the tape?

A I don't really know. I mean, all I know is that that tape when we received it in 1993, it hasn't been modified at all, if that's what --

Q From VPR?

A Right, exactly. So the original production, wherever the master is, would be no different whatsoever. If that is not a copy of the master, there would be no difference whatsoever. There has been no modifications to it.

Q Let me ask you this. Was the video shot or prepared on site or was it prepared -- were terminals taken to VPR?

A There is kind of both. There is plenty of live shots in there that show locations with a TouchNet terminal in them, and those were live locations



1 here in the Kansas City area. And then there were  
2 some -- there are some other shots in there that  
3 would be more taken from a demonstration system or  
4 something like that. But if I remember right, it  
5 is mostly live location shots.

6 Q All right. Why don't we take just a minute and  
7 view it, see what it shows here.

8 (Whereupon, the videotape, Exhibit 5,  
9 was played at this time to counter 19.)

10 Q (By Mr. Polasek) I paused the videotape there. I  
11 think it is somewhere around 19 seconds. We have  
12 a young lady dressed in red, blond hair that is  
13 inserting something into the machine. Can you  
14 tell me what she is sticking into the machine?

15 A A credit card.

16 Q Is that a credit card? To me it looks like a  
17 piece of paper, perhaps a reinforced piece of  
18 paper almost like a parking paper, parking card.  
19 It didn't look like a short Master Card, VISA card  
20 or American Express.

21 A For sure it is a magnetic stripe card, so it could  
22 be -- we had TouchFax cards at the time. There  
23 were subscriber cards for discounts on services  
24 and things like that and commercial credit cards.  
25 But that -- where she is sticking that into that



1 is a magnetic stripe card reader. It is  
2 definitely a magnetic stripe card.

3 Q Let me ask you this. Just above the place where  
4 she is inserting this, what you say is a credit  
5 card or magnetic card --

6 A Right.

7 Q -- what is this other dark spot on the right side  
8 of the terminal?

9 A We call it -- I mean, internally, we call it a  
10 credit card icon, which basically shows them how  
11 to swipe the card and what cards are accepted.  
12 And there is normally above that three easy steps,  
13 touch the green button, swipe your card when  
14 asked, if asked.

15 Q Okay. So it is not another card reader or  
16 something?

17 A No, it is on the metal.

18 Q Okay. Why don't we finish watching it.

19 (Whereupon, the videotape, Exhibit 5,  
20 was resumed and played until counter 37.

21 Q (By Mr. Polasek) Now, I don't know if you saw it.  
22 It flashes up there very quickly, it was somewhere  
23 around the 36 second mark, one of the users was  
24 pushing or was interacting with the Touchscreen  
25 and you saw the little rectangular box for the



1 internet pop up there. Did you notice that?

2 A No, I didn't.

3 Q Let's see if we can go back. I'm not able to get  
4 it stopped there. See if I can try it again.

5 MR. STITT: Let me give it a try.

6 THE WITNESS: I think I did see that.  
7 You are in front of it now.

8 (Whereupon, the videotape, Exhibit 5,  
9 was rewound to counter 34.)

10 Q (By Mr. Polasek) Now that we have been able to  
11 stop the tape, it shows a rectangular gold block  
12 labeled internet. I think it is right at -- I  
13 thought it was the 36 second mark. It may be 34.

14 MR. STITT: It appears to be 34.

15 Q (By Mr. Polasek) Did that provide for access to  
16 the internet? If the user was to touch that icon,  
17 I guess is what you would call it, that portion of  
18 the TouchNet screen, does that enable a user to  
19 gain internet access or do you know?

20 A Not at that time, no. That was like MCI mail  
21 above it. Those are possible uses for the system.  
22 And so the reason we built this video was to sell  
23 our systems. And so, again, the vision of  
24 TouchFax, TouchNet was its multipurpose  
25 information communication terminal that, depending



1 on what our customers, whoever owned these things  
2 wanted to provide, they could provide that type of  
3 information. Now, these limited number that we  
4 had in Kansas City were the only systems in that  
5 time period that we owned and operated.

6 Q Okay. When you say these that we had in Kansas  
7 City --

8 A Right.

9 Q -- this particular terminal which we have been  
10 able to stop the videotape on at this 34 second  
11 mark, that was not an actual terminal that was in  
12 public use, was it?

13 A Well, actually -- I don't know. This screen shot  
14 right here, I don't think you can assume that that  
15 screen shot came from the terminal preceding it.

16 Q Okay.

17 A Okay.

18 Q So this is a --

19 A The one I saw before that, if I remember right,  
20 that was actually in Oak Park Mall, a regional  
21 shopping mall --

22 Q Okay.

23 A -- by the Florsheim shoe store. And that was an  
24 actual installation at that time.

25 Q Okay.



1           A    But I think what we have done here is we have  
2                broken away to just a screen shot now, not a  
3                location shot but just a screen shot where on the  
4                menu we have listed out lots of different  
5                capabilities of the system.

6           Q    Okay. So this wasn't -- again, this screen shot  
7                then is not from an actual terminal that was in  
8                public use?

9           A    I think that is correct.

10          Q    But it is your testimony that this screen shot was  
11                included within the videotape that was prepared  
12                back in May of 1993?

13          A    Correct, as part of a marketing tool to market our  
14                systems. The videotape was manufactured, if you  
15                will, or developed for phone companies and others  
16                to see the vision. Obviously, from the user  
17                standpoint, the person walking up to the terminal,  
18                wherever, at Oak Park Mall, they could care less  
19                what the story is, they are just looking at what  
20                does this do for me. But to the BellSouth's of  
21                the world, we are trying to demonstrate all the  
22                capability of this system and expandability of the  
23                system.

24                               MR. POLASEK: Okay. Why don't we go  
25                ahead and continue on with the video.



(Whereupon, the videotape, Exhibit 5,  
was played to counter 2:34.)

Q (By Mr. Polasek) At least on the videotape I was  
supplied with there was a second one that I think  
it was an exact duplicate of the first minute and  
a half without music.

A Okay. There without music.

Q I have a question. Just a couple of seconds  
before where I paused the tape now at the 2:34  
mark, a user was removing something from an  
opening which I think had the label right above it  
that said fax info, and I forget what the other  
board was.

A Fax info shopping.

Q I take it that user is obtaining a -- is that a  
fax she has received?

A No, just a laser printout.

Q At that time --

A Uh-huh.

Q -- when this video was prepared?

A Right.

Q Did the terminals print out anything other than  
faxes that were being received?

A Oh, yeah. And in fact, in this one, I am sure ERA  
printed out home listings, pictures of houses off



1 a laser printer or stored images or retrieved from  
2 a database. And there were lots of different  
3 forms that are printed out. It printed out common  
4 business forms like purchase order examples and  
5 all kinds of things, so --

6 Q I didn't mean to interrupt you. I am sorry.

7 A The printer was heavily used for both obviously  
8 fax and other types of print out of stored  
9 information or retrieved information.

10 Q Okay.

11 (Whereupon, the videotape, Exhibit 5,  
12 was played to the end.)

13 Q (By Mr. Polasek) I believe that is the end of the  
14 videotape there. Now, if I recall correctly, the  
15 videotape, the initial frame indicates a May 14,  
16 1993 production date. Is that true?

17 A Yes. I mean, it is in the month of May for sure.  
18 I assume that is true. But it was definitely in  
19 the month of May.

20 Q I will represent to you --

21 A Yeah.

22 Q -- I didn't pay that close attention, but the one  
23 that you previously had given to us, that TouchNet  
24 had given to us had a date of May 14, 1993.

25 A Okay.





1 Q Did TouchNet keep a log of entities or people that  
2 this videotape was distributed to?

3 A Not to the best of my knowledge.

4 Q Was the videotape distributed to any third party?

5 A Yes.

6 Q Do you know how many?

7 A We distributed hundreds of them. I mean, this was  
8 made for the spring COMDEX show, which was the  
9 first time we were exhibiting that at COMDEX as a  
10 company which, as you know, is the biggest  
11 computer show in the world. And there we were  
12 giving out copies of the video as well as to  
13 prospective, you know, buyers hopefully of a  
14 system, as well as this was a main marketing tool  
15 for quite awhile.

16 Q Okay. Can you name or would you have any records  
17 that would indicate any specific individual that  
18 this video was given to?

19 A I would have to -- I'm sure that that was given to  
20 Flying J. I'm sure -- ask Mr. Murphy because he  
21 was our main contact with the Bell companies. I  
22 would be very confident that he would know the  
23 people at the Bell companies that were given this.  
24 Other than that, to the best of my knowledge, this  
25 is like a handout at a trade show but I am sure



1 that we gave it to the Bell companies, our main  
2 prospect. And so John would know which ones we  
3 were talking with at the time.

4 MR. POLASEK: Okay. can we take a  
5 two-minute break?

6 (Whereupon, a break was taken.)

7 Q (By Mr. Polasek) Before we took this last break,  
8 you said that, you testified that this videotape  
9 that has been marked as Exhibit 5 was distributed  
10 at the spring COMDEX show, correct?

11 A Yes.

12 Q Would you take another look at what has been  
13 marked as Exhibit 4 and within that, the last two  
14 pages?

15 A Okay.

16 Q Which are actually marked Defendant's Exhibits 7  
17 and 8. Hopefully that won't confuse the record.

18 A Yeah.

19 Q My question is, was this videotape -- you  
20 testified that this videotape was distributed at a  
21 spring COMDEX show. To me it appears that the two  
22 documents that I just referred to you concern a  
23 different show.

24 A I think that is correct.

25 Q Okay. So --



1 A We pulled the wrong invoice.

2 Q Okay. Is it your expectation that if you did in  
3 fact pull the wrong invoice and you should have  
4 pulled, let's say, spring of '93 show --

5 A Right.

6 Q Let me back up. When you say you think you pulled  
7 the wrong invoice --

8 A Uh-huh.

9 Q -- are you talking about a spring of '93 show or a  
10 spring of '94 show?

11 A Spring of '93.

12 Q Okay.

13 A We only went to -- I mean, '93 we went to both  
14 spring and fall COMDEX. And there is always a  
15 spring and there is always a fall COMDEX.

16 Q Did you go in '94 also?

17 A No, we didn't. '93 was the only year that we went  
18 to COMDEX as a trade show.

19 Q All right. Let me ask you this. If you recall,  
20 the videotape has a production date of May of '93?

21 A Uh-huh.

22 Q When is the -- when was the spring of '93 COMDEX  
23 show held?

24 A In May of '93.

25 Q Okay.



1 A It was in Atlanta.

2 Q And you have records that indicate that the spring  
3 '93 show was in Atlanta?

4 A Sure.

5 Q In May of '93?

6 A Yeah.

7 Q I would ask if you could gather those records to  
8 show that --

9 A Sure.

10 Q -- and produce them to me?

11 A Uh-huh. We were also at fall obviously as well.

12 Q In '93?

13 A In '93 with the same video, the same story. So, I  
14 mean, we went to both spring and fall.

15 Q Okay. Did you also go in '94 to the show?

16 A No.

17 Q But it is your testimony that both in the spring  
18 and fall shows of '93 that this videotape was  
19 given to prospective purchasers of your equipment?

20 A Yes.

21 Q And, again, do you have any document --

22 A Well --

23 Q Go ahead.

24 A I would qualify that. In the fall of '93, I did  
25 not personally go to that show but Mr. Murphy did.



1 So you will need to ask him on the fall show  
2 regarding the distribution of the video --

3 Q Okay.

4 A -- because I wasn't physically there.

5 Q You don't have any documentation that indicates to  
6 whom this videotape would have been given to at  
7 either show?

8 A I don't. John may. Mr. Murphy may.

9 Q Let me ask it this way. As the corporate  
10 representative of TouchNet, you have no  
11 documentation to support the claim that it was  
12 given out to others in the public?

13 A No, I have no documentation of that.

14 Q Going back to one of the first things we talked  
15 about this morning, you have provided me with two  
16 copies of additional documentation that you have  
17 -- that TouchNet has gathered and has made  
18 available today. Why don't we, for purposes of  
19 the record, go through these materials and have  
20 you identify them?

21 A Okay.

22 MR. POLASEK: Off record for just a  
23 second.

24 (EXHIBIT NOS. 6 THROUGH 22 WERE MARKED FOR  
25 IDENTIFICATION.)



1 Q (By Mr. Polasek) Let's work from this stack since  
2 I have gone through and marked it. I think first  
3 we are starting with -- this is a stack of  
4 documents that you have produced today and I have  
5 marked it as Exhibits 6 through 22.

6 I think we are going to find that Exhibits 6  
7 through 15 are promotional material of -- I  
8 believe all of it is TouchNet, but you can correct  
9 me if I am wrong when you go through it. Exhibit  
10 12 appears to be a magazine article and Exhibit 14  
11 is out of the Kansas City Business Journal, but  
12 other than that, I think they are all promotional  
13 materials of TouchFax.

14 Why don't you go through there for the record  
15 and identify those documents for us, if you would?

16 A Okay. Exhibit No. 6 was our first brochure of our  
17 product.

18 Q When you say "first brochure," can you give us a  
19 date that this brochure was actually distributed  
20 to any third party if, in fact, it was  
21 distributed?

22 A Early 1990. And we distributed -- I mean, it was  
23 distributed to everybody we talked to. I mean, we  
24 were starting a company and this was a product and  
25 you walked by us, you got one. So this was our



1 corporate brochure, if you will, of really 1989 is  
2 when we first built the product and 1990, that was  
3 our TF1000 series, a certain model of our  
4 self-service terminal.

5 Q Okay.

6 A Okay.

7 Q But -- and I think the answer to my next question  
8 is going to be obvious. But again, this brochure  
9 -- and, in fact, the terminal that is described in  
10 the brochure did not have the feature in which the  
11 user paid for access to the internet?

12 A That's correct.

13 Q Okay.

14 A That's correct.

15 Q And then Exhibit No. 7 is our second -- I am going  
16 to call it our second product brochure, which was  
17 our TF700 TouchNet terminal, self-service  
18 terminal. And this was 1991 we introduced this  
19 series, if you will, or this particular version of  
20 our technology and in the March, April time frame  
21 in 1991. Same technology, just repackaged for a  
22 smaller floor space, footprint need, if you will,  
23 for locations.

24 Q Okay.

25 A Okay. Exhibit No. 8 is just another kind of



1 single picture, but it is also part of our  
2 brochure, if you will, or information we would  
3 give to prospective parties on our TF700 series  
4 product.

5 Q When was that given?

6 A 1991. TF700 series only had a life of 1991. And  
7 this is the TF750; again, basically the exact same  
8 thing as the TF700. The only difference was a  
9 slanted countertop we decided instead of a flat  
10 countertop where people were sitting too many cups  
11 of coffee and spilling stuff. We decided to slope  
12 it and therefore it became the 750. We also in  
13 this, in the 750, and the 700, right in here is a  
14 slot for a keyboard to extend.

15 Q You are referring to Exhibit 8?

16 A Right, Exhibit 8. And, right, Exhibit 7. You can  
17 see the keyboard coming out of the neck area, I am  
18 going to call it, of the 700. And this Exhibit 8  
19 basically is the same thing. The TF750 really had  
20 two changes over the 700: that was the sloped  
21 countertop, and we decided to just lay the  
22 keyboard into the countertop versus having a  
23 motorized keyboard come in and out. There were  
24 some concerns that people might get things caught  
25 in the motorized keyboard version. So those were





1 the two changes. TF750 was introduced in the  
2 first quarter of 1992.

3 Exhibit 10 is an advertisement we did for  
4 Telephony Magazine. And this must be some type of  
5 proof or something that came from our company that  
6 laid it out for us, network graphics. Basically  
7 just, you know, a magazine advertisement.

8 Q Did that actually run in the magazine?

9 A Yes, it did. We advertised in Telephony and it  
10 actually ran in that magazine.

11 Q Do you know when?

12 A Not specifically, but I am sure we have the  
13 invoices so I could pull that.

14 Q Or we could go to -- I take it we could find an  
15 old copy of the magazine somewhere?

16 A Sure, you bet.

17 Q Okay.

18 A Yeah. Telephony we always advertised in in front  
19 of a trade show called SuperCom, which was another  
20 big trade show for all the telephone companies.  
21 And so we always had a booth there. In fact, this  
22 one here is running in front of PACE '92. So this  
23 particular ad series we used for quite awhile.  
24 But PACE '92 was Public Accessible Communication  
25 Equipment show, and that was for all the pay phone



1 type operators in the country. So, yeah, we have  
2 got -- I am sure we have invoices on that or we  
3 could go back to PACE magazines to see that ad  
4 running.

5 Q Okay. I have one other question.

6 A Sure.

7 Q I notice on the lower right corner of what we have  
8 marked as Exhibit 10 --

9 A Uh-huh.

10 Q -- there is some handwritten notes that say  
11 attachment to Exhibit H. What does that pertain  
12 to?

13 A I don't have any idea.

14 Q Okay.

15 A I thought that was somebody else's, but maybe it  
16 was ours. I don't know.

17 Q Okay. You can go ahead.

18 A This is a brochure on the TF450, which again is  
19 another rendition of our basic public  
20 communications terminal. And that was introduced  
21 in about the second quarter of 1992. And that is  
22 about it for that.

23 Q Okay.

24 A Okay. This is an article, Exhibit No. 12 is an  
25 article, October 1992, in Interactive World about



1 the TouchFax terminal, the system, basically  
2 outlining what we thought its market and its uses  
3 and obviously whoever wrote the article, Alan  
4 Winer, thought about the marketplace for our  
5 product. So it highlights what the system is and  
6 what it is used for, and accessing information  
7 services, OAG Flight Fax, stuff like that,  
8 electronic library, USA Today. So it is a good  
9 overview of what we were doing at the time.

10 Let's see. Exhibit 13 is Multimedia  
11 Interactive Terminal Location Opportunity. So  
12 this is the first time that TouchNet was going to  
13 place its own terminals into the marketplace into  
14 the Kansas City area here. And so we had to tell  
15 the story to the Hy-Vees, the location at the  
16 time, why they would want this in there.

17 So this is a pretty comprehensive overview of  
18 what we thought of who we are, first of all, and  
19 what our plan was as far as deploying these public  
20 access terminals in the Kansas City area and why a  
21 location like a retailer would want one of them in  
22 there in their location.

23 Exhibit 14 is an article reprint out of the  
24 Kansas City Business Journal which highlights some  
25 of the success that we were having at the time



1 selling and marketing our public access system to  
2 companies like AT&T. A lot of this focuses on  
3 AT&T and what they were doing with our system and  
4 some of the other capabilities of our terminal.

5 Article 15, or Exhibit 15 rather is another  
6 brochure, and this was also in 1992, and this was,  
7 I would say, a little expanded -- a little bit of  
8 an expanded story or vision of what we were doing,  
9 because it not only included the terminal itself,  
10 the public access terminal, but there's more  
11 conversation in here about the electronic library  
12 or the information access component of our  
13 business plan, if you will, or business model that  
14 we were trying to market these on. So it is a  
15 little bit more extensive from the standpoint of  
16 not just featuring, you know, just the box itself.

17 Q Okay. Go ahead. Were you finished?

18 A That's it.

19 Q Let me ask you the same question I asked with  
20 reference to Exhibit 6. These exhibits that  
21 you've just gone through, namely No. 7 through 15,  
22 and take as much time as you need to to look  
23 through them, but my question is, do any of those  
24 disclose a terminal in which a user has to pay for  
25 access to the internet?



1 A None of them have the word internet --

2 Q Okay. What do they --

3 A -- in there. I mean, we speak often, I think, of  
4 computer based on-line services --

5 Q Okay.

6 A -- and other types of information, on-demand type  
7 services.

8 Q Such as the flight information that you talked  
9 about --

10 A Right.

11 Q -- at the beginning of the deposition?

12 A Flight information. There is information in here  
13 regarding restaurant information, entertainment  
14 guides, coupons, on-demand flight information,  
15 flowers, consumer reports, Prodigy access, Kansas  
16 City Star services, interactive games, Western  
17 Union mail-o-grams. I mean, a large list of other  
18 types of realty facts, photo facts, on-line  
19 classified. So many -- a pretty broad scope of  
20 different types of information services.

21 Q And they are all specific services such as flowers  
22 or flight information?

23 A Not really. Prodigy is obviously not a specific  
24 service. It is a collection of services. So, I  
25 mean, there is basically, you know, just a wide



1 variety of information services.

2 Q Whatever was on that machine, I mean, you had  
3 whatever services that were either on the machine  
4 or that you could access through Prodigy; is that  
5 accurate?

6 A And other services too. Prodigy wasn't the  
7 only --

8 Q Whatever services were on the machine, correct?

9 A Sure, whatever services were on the machine.

10 Q Okay.

11 A Right.

12 Q Let me ask you about Exhibit 13.

13 A Okay.

14 Q If you would take a look at that. Page 11,  
15 two-thirds of the way down towards the bottom, it  
16 indicates that Prodigy access was available. And  
17 what it says is that it allows customers with  
18 Prodigy subscriptions access to Prodigy via the  
19 terminal. At the time that this document was  
20 prepared, was Prodigy access limited to those that  
21 had Prodigy subscriptions?

22 A It was -- I mean, again, there was two tracks on  
23 the Prodigy. There was -- if you were a  
24 subscriber, you could go one way. If you were a  
25 nonsubscriber, you could go a more limited path.



1 Q And, yeah, I recall that is what you testified to  
2 previously.

3 A Okay.

4 Q But this document seems to indicate Prodigy access  
5 is available to those who have subscriptions. It  
6 doesn't mention anything about those who do not  
7 have subscriptions, correct?

8 A Probably just an oversight.

9 Q Okay.

10 A I mean, I don't think that is -- that one word is  
11 relevant or not relevant but rather the impact of  
12 this whole document that we were trying to present  
13 to a Hy-Vee grocery store.

14 Q Continuing on in the stack of documents that you  
15 have produced, Exhibit 16 appears to be a copy of  
16 US Patent 4359631. Was this in a TouchNet file?

17 A Yes.

18 Q Does TouchNet keep a file -- or let me ask you  
19 this. Why did TouchNet have a copy of this  
20 patent?

21 A In maybe it is 1991, we had applied for a utility  
22 patent on our system and we were rejected multiple  
23 times based on obviousness and prior art. And  
24 this together with other patents were presented to  
25 us by the examiner as prior art that would not



1 allow him to give us the patent we were trying to  
2 get.

3 Q Okay.

4 A So this is prior art that we think the Mettke  
5 patent examiner or the office overlooked.

6 Q Okay.

7 A Go ahead.

8 Q And do you have -- well, was this the entirety of  
9 the prior art that existed or that currently  
10 exists in the TouchNet file or is there additional  
11 prior art?

12 A This is the one that was in the file. But if I  
13 remember right, there were other prior art  
14 references in the examiner's final rejection.

15 Q Okay. Your patent application that was filed back  
16 in 1991, was that based on a product that TouchNet  
17 was producing?

18 A Yes, yes. It was based on our basic system of a  
19 self-service terminal for both facsimile and  
20 information services, communication services. So  
21 it is kind of our concept that we have seen in all  
22 of these documents tried to lay out in front of an  
23 examiner for a possible patent.

24 Q Let me ask this. Did this patent that has been  
25 marked as Exhibit 16, in view of the fact that the



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1 examiner thought it was close to what TouchNet was  
2 attempting to get a patent on, did this present an  
3 infringement concern for TouchNet?

4 A I don't think at the time that we were concerned  
5 about that, no.

6 Q At the time. Was there a later time?

7 A Not that I know of. No, we have never been  
8 concerned about it.

9 Q Did TouchNet ever take a license under this  
10 patent?

11 A No, no.

12 Q Okay.

13 A This is the patent that the examiner used as  
14 basically saying that all the apparatus, all the  
15 components, everything is well-known. You know  
16 the words better than I know. Well-known. It is  
17 out there. I can't say this hit exactly, but what  
18 we had put together as a system was not novel, all  
19 right. And so this is one of the many that they  
20 cited.

21 Q Okay.

22 A Exhibit 17.

23 Q I think actually 17 is a duplicate of some of the  
24 information that is attached to Mr. Murphy's  
25 affidavit. You can go ahead and identify it for



1 the record.

2 A It is an invoice from a company called VPR  
3 Creative Group here in Kansas City, MO, and it is  
4 an invoice for \$4,500 for the production of the  
5 TouchFax America video that we saw earlier.

6 Q And the second page is the final bill?

7 A Yes, it looks like the final invoice.

8 Q Something that wasn't in the attachments to Mr.  
9 Murphy's declaration is the third page. It is  
10 another -- apparently another invoice from VPR.  
11 Can you identify that document to me, tell us  
12 whether it is related to the same video or not?

13 A I don't know for sure, but this is the only -- VPR  
14 only did one thing for us and so it had to be  
15 related one way or another.

16 Q I would also point out to you that it has a  
17 different job number. I don't know if that job --  
18 if the job numbers on their invoice mean anything  
19 to you. Does that tell you whether it is related  
20 to the production of this videotape that we were  
21 looking at earlier?

22 A Again, I don't know for sure.

23 Q Okay.

24 A I don't recall them doing a lot of different  
25 things for us, but I don't know for sure.



1 Q Okay. Can you identify what's been marked as  
2 Exhibit 18?

3 A This is an invoice from Spinnaker Communications  
4 here in Kansas City, Missouri, to us regarding, it  
5 looks like, editing, production, etc.

6 Q Does this apply to that videotape that was marked  
7 as Exhibit 5 that we looked at earlier?

8 A I don't know.

9 Q Do you think Mr. Murphy would know?

10 A May or may not. But these folks did some  
11 multimedia development for us for -- I see trade  
12 loop up here, which loop sometimes to us or a lot  
13 of times to us means the screens, the video that  
14 is playing when the terminal is at an idle state.

15 Q So you are not quite sure what this actually  
16 pertains to?

17 A Correct.

18 Q Okay.

19 A Right.

20 Q Do you know who pulled the documents that have  
21 been produced today?

22 A Mr. Murphy.

23 Q Okay. Well, then we will ask him about it.

24 A Sure.

25 Q Can you identify what has been marked as Exhibit



1 19?

2 A Exhibit 19 is an invoice from us to Prodigy  
3 Services, and it is an invoice for them to  
4 basically have their service available on our  
5 Kansas City terminals, of which looks like there  
6 were 38 of them installed whenever this invoice  
7 was generated in September of '93.

8 Q Again, Prodigy was at the time paying TouchFax for  
9 the right to have Prodigy on those terminals?

10 A Correct.

11 Q Can you tell me the -- explain the difference  
12 between TouchFax and TouchNet.

13 A Originally, we were incorporated under TouchFax  
14 Information Systems and we had -- we had a  
15 trademark on TouchNet and TouchNet was a remote  
16 management system that managed all the TouchFax  
17 terminals. We decided that there was a better  
18 flip if we became corporately TouchNet, which  
19 represents more of our ability to touch a wide  
20 variety of networks.

21 Q As opposed to fax?

22 A And as opposed to fax. And fax was just fax  
23 services on a terminal. So basically we had a  
24 corporate name and a trademark name and we flipped  
25 them.



1 Q Okay.

2 A So I guess this is August, September, October '93,  
3 October, November, what, through December --

4 Q Okay.

5 A -- of billings.

6 Q The next exhibit has been marked as Exhibit 20.  
7 Can you identify that, sir?

8 A Exhibit 20 is a printout of both, kind of a  
9 combination of source code to our system software,  
10 our terminal software --

11 Q Uh-huh.

12 A -- as well as a transaction log. Like I mentioned  
13 earlier, everything writes to a log on the hard  
14 drive and this is a printout of a particular  
15 transaction log. And that is basically it.

16 Q Okay.

17 A It describes our software and basically what it  
18 does.

19 Q All right. The next document is a set of  
20 documents, and the next set of documents has been  
21 marked as Exhibit No. 21. I kept these together  
22 because they appear to all relate to some  
23 relationship with a company that appears to be, is  
24 it T-O-N Services, Inc.?

25 A TON Services, yes.



1 Q TON?

2 A TON, yeah, T-O-N.

3 Q Can you identify those documents?

4 A Individually or as a group?

5 Q Let's start with a few questions, I guess.

6 A Sure.

7 Q Tell me, what is TON Services?

8 A TON Services is a subsidiary of Flying J Travel  
9 Plazas. Flying J Travel Plazas operates somewhere  
10 around 85 to 100 truck stops around the U.S. And  
11 TON was a subsidiary that they developed to offer  
12 a new category of services that they will call  
13 road-link services. So inside a Flying J  
14 facility, TON Services would implement a  
15 Touchscreen transaction, the kiosk system to  
16 provide drivers, truck drivers with on-line  
17 services.

18 Q Such as?

19 A Trip information, posting their equipment  
20 availability. I'm here or I'm going to be there  
21 and I have this much space available on my  
22 trailer, loads that are available in different  
23 cities around the country, as well as the fax  
24 services, copy services, they purchase prepaid  
25 phone cards and time, insurance. They sell



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1 insurance.

2 I'm probably missing something in there, but  
3 basically a wide variety of things that drivers  
4 would want to take advantage of to make their jobs  
5 easier.

6 Q Were they charged for information that they either  
7 gained or provided over the terminal concerning  
8 trips or load availability?

9 A Trips. Again, some information was pay-per-use  
10 and some information was provided in a free state.  
11 Trip information, for example, how do I get from  
12 here to there and how many miles, etc., they paid  
13 for that service with either commercial credit  
14 card or cash. These systems had cash readers on  
15 them, and that is the first time we had added that  
16 capability to our basic platform.

17 Q Okay.

18 A So, yeah, they were mostly charged for the  
19 different services on the machine, but there are  
20 several things that were more advertising response  
21 orders.

22 Q What was the period of time that TouchNet had a  
23 relationship with TON?

24 A Well, we first signed a nondisclosure in September  
25 of '92.



1 Q That's the first document?

2 A That is the first document in the stack, right.

3 And we had been out to Utah right after that and  
4 really began the conversations with them about  
5 what they wanted to implement as far as a business  
6 plan for TON Services.

7 Q Okay.

8 A And so we went through a series, naturally, of  
9 negotiations and presentations and everything  
10 else, and contracts were signed with them in  
11 February of 1993. And those contracts required us  
12 to add some changes that we had to make or some  
13 additions that we had to make to our basic system.  
14 We had to add the capability to accept cash and  
15 coin and put the accounting system for it  
16 underneath in our low level software that we just  
17 went through the previous exhibit.

18 We also had to be able to add their services,  
19 which were trip routing, scanning equipment,  
20 posting and those types of what I will call  
21 road-link services. That was in February of 1993  
22 that we signed the contracts. And I believe it  
23 was in the summer months that we started shipping  
24 units. We were developing their software.

25 Q Units being terminals?





1 A Well, uh-huh, during that time period from  
2 February to June, July, August, that time frame,  
3 we were adding the new capabilities into our low  
4 level software and we were developing their  
5 road-link applications for them.

6 Q Okay.

7 A And then from there, I mean, they started --  
8 initially, contractually, they had to buy ten  
9 units, and so they started to put them out in  
10 August, the first ten. And then in November they  
11 started rolling out for the next 12 months to all  
12 of their sites and they are still out there.

13 Q Okay.

14 A So we still have an on-going relationship with  
15 them.

16 Q Do any of those terminals provide for  
17 pay-as-you-go or pay-for-use access to the  
18 internet?

19 A No.

20 Q Okay. Let's move on to Exhibit 22. I take it --  
21 going back to Exhibit 21 -- those documents were  
22 records that were kept at TouchNet?

23 A Uh-huh, yes.

24 Q If you would, identify Exhibit No. 22.

25 A Exhibit 22 is really several documents that are



1 related to a project, an implementation of our  
2 system that we were doing in Canada with a company  
3 called Mediatel, which was a subsidiary of Bell  
4 Canada. It was for the design and implementation  
5 of an airport kiosk system that Mediatel wanted to  
6 work with us on as far as bringing that forth.

7 Q This is a document that was prepared by TouchNet,  
8 correct?

9 A Well, no. Several of these, the first one, for  
10 example, on the top of the stack, that is a  
11 document prepared by Mediatel and provided to us  
12 in August of 1992 which gives us specifications  
13 that they saw for an airport system.

14 Q This is the document you are referring to that is  
15 labeled Airport Kiosk Systems Requirement  
16 Statement?

17 A Correct.

18 Q Also at the top it says Mediatel Restricted?

19 A Correct.

20 Q I take it they were -- they wanted to restrict  
21 access to this document?

22 A It was an internal document, correct.

23 Q In this document -- again, I have not had an  
24 opportunity to read it thoroughly, but did they  
25 request as part of their system requirements a



1 pay-as-you-use terminal for that internet access?

2 A Yeah. They have pay as you use, and the name of  
3 their service was iNet.

4 Q Let me restate that. Did they ask for a system in  
5 which the user had to pay for internet access?

6 A There was not internet access. It was access to  
7 their service, their on-line service. They were  
8 like a Prodigy.

9 Q Okay.

10 A Okay. iNet was like a Prodigy. And so, for  
11 example, in -- on page 42.1.4, the initial airport  
12 configuration will permit access to iNet 2000,  
13 which is their on-line service; Envoy 100, which  
14 is their e-mail service; and E-Fax, which is  
15 enhanced fax services, as well as many other  
16 custom nets it says.

17 Q Okay. iNet 2000, you say that was their on-line  
18 service?

19 A Correct.

20 Q What did that provide a user access to?

21 A It was very similar to a Prodigy type. It was  
22 full of, you know, a menu, the basic menu of  
23 information from travel services to weather  
24 services, you know, stock reports. It was the  
25 basic.



1 Q Whatever they put on it, stock reports or sports  
2 or --

3 A Yeah, it was like any --

4 Q -- business?

5 A It was like any of the other commercial on-line  
6 services in 1992. It was just their version of  
7 it.

8 Q Okay.

9 A And they also speak here accredited and  
10 unaccredited users. And basically what they mean  
11 by that is accredited would be subscribers to  
12 their service. They would want to have the  
13 ability to have access. And it says later  
14 unaccredited users will be asked to insert their  
15 credit card which will be validated by the date  
16 also over Datapac, which was their network, before  
17 any service takes place. The notation says please  
18 wait, your credit card is being validated and will  
19 be displayed during this period.

20 Q Okay. All right.

21 A These are -- do you want me to --

22 Q I was just going to say, I had not marked each  
23 document separately as an exhibit. If you would  
24 quickly look through the stack. Are these all  
25 related to Mediatel?



1 A These are all related to Mediatel and some  
2 correspondence, including a license agreement  
3 between us for the development and incorporation,  
4 I guess, if you will, of their on-line services.

5 Q Why don't we go ahead and mark these individually  
6 and let you identify them also.

7 (EXHIBIT NOS. 23 THROUGH 25 WERE MARKED FOR  
8 IDENTIFICATION.)

9 Q (By Mr. Polasek) Okay. You can continue on. I  
10 think you were identifying what has been marked as  
11 Exhibit 23.

12 A Exhibit 23 is a correspondence, a fax that was for  
13 Dean Vermeire and from one of their project  
14 managers, and it was in November of '92. And  
15 basically it outlined several things, several  
16 technology issues, if you will, from the software  
17 standpoint that we were working on to make our  
18 system incorporate the iNet and the Envoy 100 and  
19 their E-Fax service access to their specification.

20 Q Okay.

21 A Along the way, if we read it in detail, we could  
22 see we are going over a network, we are accessing  
23 over just like an on-line service like you do with  
24 America On-Line. You dial into a local node and  
25 it goes back to America On-Line, which is a



1           proprietary database just like this was. And then  
2           we also have the credit card capability that is  
3           built into this for the either noncreditors or  
4           nonsubscribers, as they call it.

5           So just some review, if you will. I think  
6           the basis of this is this is their review of our  
7           initial software saying, okay, here is what you  
8           need to work on now basically. And this was in  
9           November of '92.

10          Q   One of the points they were talking about in this  
11               document was the access to iNet?

12          A   iNet, correct. That's correct. I think it is  
13               on --

14          Q   Let me ask you a question. On page 3 of this  
15               document are their other services. There is  
16               reference to a billing on a per-minute basis.

17          A   Uh-huh.

18          Q   What is that in reference to?

19          A   Well, that is before -- if somebody was  
20               nonaccredited, unaccredited users, they were being  
21               charged for accessing iNet on a per-minute basis.  
22               And so a credit card screen was supposed to come  
23               up and they swipe a credit card and we approved  
24               that credit card and they are allowed to enter the  
25               iNet on-line service. So it is pay-per-use



1 on-line access.

2 Q Okay.

3 A With a credit card.

4 Q Access to iNet?

5 A Correct.

6 Q All right. Can you identify the next document?

7 A Exhibit 24 is another document to Dean from  
8 Mediatel from, again, their project manager,  
9 giving him -- this is back in September of '92 now  
10 -- giving him some very specific log-in  
11 instructions for the public access terminals. So  
12 it is basically how to dial in to their data  
13 packet, as they call it their datapak network,  
14 which is basically a Sprint Net, to dial into  
15 local Sprint Net node and went over an X 25  
16 network to their proprietary database, which is  
17 really -- you know, all the America On-Line's and  
18 Prodigy's and all of those folks still do it.

19 The next document, Exhibit 25, is a software  
20 license agreement between Mediatel and TouchFax  
21 and also TouchFax Canada, which is a licensee of  
22 ours, basically outlining the business  
23 relationship and what the responsibilities of the  
24 parties are and the minimum purchase and all of  
25 the terms and conditions, I guess, of our business



1 relationship.

2 Q When was this document executed?

3 A It was executed in September of 1992. And then in  
4 the schedules, it goes through the different  
5 services that were to be offered or could be  
6 offered, let me put it this way. And Schedule B  
7 lists out what we call TouchFax services.

8 Q Right.

9 A And they are broken down into sections, fax  
10 services, communication services such as phone,  
11 E-mail, Dataport, remote database access, business  
12 services like copies, word processing, and other  
13 types of enhanced information services from custom  
14 forms and personal flight information and travel  
15 reports and, you know, a long list of different  
16 types of information on demand.

17 Q Okay.

18 A Schedule C just goes into our royalty rate. And  
19 Schedule D is their services then that they were  
20 interested in adding to the mix. And they list  
21 out the iNet 2000, Envoy, and The Net, enhanced  
22 fax.

23 Q In Schedule D where it says, "The Net," what is  
24 that in reference to?

25 A I believe that is their proprietary service.





1 Q Okay.

2 A I don't believe in 1992 that that was the  
3 internet.

4 Q Okay.

5 A Okay.

6 Q I was going to ask, it is not short for the  
7 internet?

8 A Right. In September of '92, I am not sure the  
9 people at the table knew all of that.

10 Q Okay.

11 A Okay. We developed all the software. The  
12 product, the hardware and the software all was  
13 developed here, tested here and later shipped to  
14 Canada.

15 Q So units were actually shipped to Canada?

16 A Yes.

17 Q And installed in Canada?

18 A Yes.

19 Q Do you know if any of those units are still in  
20 operation?

21 A No.

22 Q They are not?

23 A No. And nor is Mediatel as a division.

24 Q Okay. Did TouchNet -- let me ask you this. What  
25 happened to Mediatel?



1 A Mediatel was disbanded. It was like phone  
2 companies do here, the same thing. They set up  
3 little groups of people to start new projects  
4 based on new technology or new product offerings.  
5 And if they are viable, if the business plan looks  
6 good, the market trial looks good, they expand on  
7 them, if not, they basically just cut them loose.

8 Q What happened to the units that had been shipped  
9 to Canada to Mediatel?

10 A I think that our Canadian affiliate bought back  
11 some -- they bought ten originally -- bought back  
12 some number of them, maybe eight of them or  
13 something like that a year later.

14 Q Okay.

15 A At ten cents on a dollar or something like that.

16 Q In 1993?

17 A Yeah.

18 Q What is the name of your Canadian affiliate?

19 A TouchNet Canada.

20 Q These units that were made for Mediatel, they were  
21 made by TouchNet in I guess Missouri?

22 A Kansas.

23 Q Kansas?

24 A Yes. Yeah. The Canadian operation, they are just  
25 a value added. They are a reseller. They



1            basically don't develop technology. We do all of  
2            that here. They are to market technology in  
3            Canada, TouchNet technology.

4            Q    And this terminal provided access to what they  
5            refer to as iNet?

6            A    Yes.

7            Q    Did not provide access to what we would call the  
8            internet?

9            A    No.

10                   MR. POLASEK: Okay. Mr. Stitt, I  
11                   understand that you are going to present Mr.  
12                   Vermeire to go over what we have marked as Exhibit  
13                   20, the software?

14                   MR. STITT: That's right, yeah.

15                   MR. POLASEK: Why don't we move on to  
16                   Mr. Vermeire.

17                   MR. STITT: Okay. I have a few  
18                   questions for Mr. Toughey, though. We can do that  
19                   now and then go on to Vermeire.

20                   MR. POLASEK: That is fine. I think  
21                   that would be the easiest.

22                   MR. STITT: Yeah.

23                   EXAMINATION

24                   BY MR. STITT:

25                   Q    Mr. Toughey, if we could look again at Exhibit 23.



1 The Envoy 100 was an e-mail service, was that  
2 correct?

3 A That's correct.

4 Q And the other service was Mediatel, and how did  
5 you characterize that service?

6 A Well, Mediatel was really just a division of Bell  
7 Canada, and they were a division that was involved  
8 in the development and marketing of an on-line  
9 service offering and electronic mail offering and  
10 also like enhanced fax services, broadcasting,  
11 faxes and stuff like that. So they were involved  
12 in those three categories of different services.

13 Q During the period 1992 and into 1993, did this  
14 company offer an on-line service?

15 A Yes.

16 Q How would you contact that on-line service?

17 A Just like you would at that point in time with a  
18 Prodigy or America On-Line if you were a  
19 subscriber to their service. You would have their  
20 PC software and you would have a modem in your  
21 system, your computer system, and you would dial  
22 up and put in your password and your log-on and  
23 then be presented with a menu of different types  
24 of services. So that was the standard way to get  
25 into their service.



1 Q And this company turned to you to develop a series  
2 of kiosks?

3 A Yes.

4 Q Why did they come to TouchNet to develop those  
5 kiosks?

6 A Well, they either -- in reality, they either were  
7 going to develop one themselves or find somebody  
8 that was further along in the process. And they  
9 found us or we found them and decided not to  
10 reinvent the wheel, that we already had everything  
11 they were looking for. The only component that  
12 was needed was software to reside on our kiosk or  
13 our public terminal to access that on-line  
14 service. So they saw no need to reinvent the  
15 wheel.

16 Q Very good. On page 3 of Exhibit 23, under the  
17 heading under services, would you read what it  
18 says there?

19 A It says, Should call up the credit card capture  
20 screen for billing before dialing in to Datapac.  
21 Billing is 75 cents/minute with a three minute  
22 minumum.

23 Q What was Datapac?

24 A Datapac was their wide area network. It was the  
25 access point, if you will, for the dial-up modem



1 to call into. It would route you to their  
2 database, their proprietary on-line service.

3 Q And they were being billed on a pay-per-use basis  
4 for that? If a customer was being billed, that is  
5 on a pay-per-use basis?

6 A Yes.

7 Q Is that charge shown here in that sentence?

8 A Yes, it is.

9 Q And that charge was how much?

10 A 75 cents per minute with three minute minumum  
11 charge.

12 Q These devices that TouchNet was asked to build  
13 were manufactured at what location?

14 A They were manufactured in Lenexa, Kansas.

15 Q Were they ever operated in Lenexa, Kansas?

16 A Yes.

17 Q How were they operated in Lenexa, Kansas?

18 A They were operated in a development mode and  
19 testing mode. We would call into the Datapac  
20 network from Lenexa, Kansas, and route ourselves  
21 to their services for testing our software and  
22 proving our software in.

23 Q Was the pay-per-use feature tested at that time?

24 A Yes.

25 Q Was it found to be operational?



1 A Yes.

2 Q Was it found to be operational while connected to  
3 the on-line service of the Canadian company?

4 A Mediatel.

5 Q Yes, thank you.

6 A Mediatel, yes.

7 Q Very good.

8 A That was one of the specifications of the project.

9 Q Very good. If I could review just briefly, if you  
10 will recall the device that was being offered to  
11 Mediatel, you have testified it included an  
12 on-line page-as-you-use communication service.  
13 Would that be a correct characterization of the  
14 pay-per-use service?

15 A You said a commercial -- would you repeat that?

16 Q Public on-line pay-as-you-use?

17 A That's correct.

18 Q So any member of the public could address this  
19 terminal, use a credit card, be billed on a  
20 pay-as-you-use basis and contact that on-line  
21 service?

22 A That was -- yes, that was the Mediatel business  
23 plan. That is what their specifications called  
24 for.

25 Q That is what you made and sold to them?



1 A Correct.

2 Q Did your device include a central processing unit?

3 A Yes.

4 Q Did it include telephone access node?

5 A Yes.

6 Q Did it include an internal modem coupled to the  
7 CPU?

8 A Yes.

9 Q And coupled to the telephone access node?

10 A Yes.

11 Q Did it include a video display monitor?

12 A Yes.

13 Q Did it include a keyboard for providing user  
14 interface to the CPU?

15 A Yes.

16 Q Did it include a credit card reader swipe device?

17 A Yes.

18 Q And that was coupled to the CPU?

19 A Yes.

20 Q Was that credit card device intended to accept  
21 payment from a user --

22 A Yes.

23 Q -- for use of the terminal?

24 A Yes.

25 Q Did the terminal include means for accessing a



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1 commercial on-line service?

2 A Yes.

3 Q And what was that commercial on-line service?

4 A iNet

5 Q And was there software installed in the CPU to  
6 allow interface with the iNet commercial on-line  
7 service?

8 A Yes.

9 Q And to allow the CPU to interface with credit card  
10 service centers?

11 A Yes.

12 Q That software we have here, is that the same  
13 software that has been used in the other TouchNet  
14 devices installed here in the United States?

15 A Yes. I mean, that's the foundation of it, yes.  
16 We have actually added more capabilities over the  
17 years, but I mean that goes back to 1992 and those  
18 were the basic system resources of a TouchNet  
19 terminal.

20 Q I would like to turn now to Exhibit 19.

21 A Uh-huh.

22 Q Exhibit 19 are memorandums of -- they are entitled  
23 invoice but they indicate payments from Prodigy to  
24 TouchFax at that time; is that correct?

25 A That's correct.



1 Q I believe it has been your testimony, please stop  
2 me if I mischaracterize it, that TouchNet --  
3 TouchFax at that time had contacted Prodigy  
4 regarding having Prodigy software on their device,  
5 on TouchNet's device; is that correct?

6 A That's correct. In fact, much prior to this. We  
7 had been contacting all the on-line services for  
8 probably several years before this.

9 Q Was the Prodigy software loaded on to a TouchNet  
10 machine?

11 A Yes.

12 Q Was that machine placed out into public service?

13 A Yes.

14 Q How did Prodigy receive payment from a user for  
15 the service?

16 A They have their normal subscription, monthly  
17 subscription revenue from the service and that's  
18 how they received payment.

19 Q When TouchFax presented this concept to Prodigy,  
20 was Prodigy offered an alternative billing system  
21 for use, that is for billing of the user of their  
22 software?

23 A Yes. They were offered all the capabilities of  
24 the system.

25 Q What did those capabilities include at that time?



1 A Well, they included the ability to accept a credit  
2 card, clear a credit card. If there was a charge  
3 it would print the receipt. Then if there is no  
4 charge, then naturally it doesn't. It, you know,  
5 obviously had to use the modem to dial into  
6 Prodigy. Telephone, it could use a telephone node  
7 for making voice phone calls back to Prodigy if  
8 somebody had a help question or something like  
9 that.

10 So basically all the system functionality was  
11 available to Prodigy to decide on how they wanted  
12 to offer that service and in what public location.

13 Q You have testified that Prodigy did not charge  
14 users on a pay-per-use basis; is that correct?

15 A That's correct.

16 Q Could Prodigy have charged users using your  
17 machine on a pay-per-use basis?

18 A Yes.

19 Q How is that so?

20 A The underlying system of our software has the  
21 capability, depending on configuration setup of a  
22 particular service to charge or not charge. And  
23 when it charges, when you put some dollar amount  
24 into the configuration file when you want to  
25 charge the user for a pay-per-use activity, then a



1 credit card screen will be presented to them and  
2 they will be able to swipe their credit card and  
3 then there is another flag that says do you want  
4 to validate this card right now, dial out to a  
5 card processor or not.

6 Because several of our customers didn't think  
7 it was worthwhile to validate a \$3 charge. We  
8 will take the risk on it. It is no big deal. So  
9 that was again an option, if you will, for the  
10 service provider.

11 Q So in 1992 to 1993 when you were offering the  
12 service to Prodigy, did you demonstrate to them  
13 and offer to sell to them a pay-per-use kiosk?

14 A Sure. In fact, we were trying to -- it was our  
15 intent, because our business primarily was selling  
16 systems to people that wanted to offer services,  
17 we thought Prodigy would be a real good owner and  
18 operator of public access kiosks. And they  
19 thought they might be as well. And this was  
20 really more of a trial on our equipment for them  
21 to determine what kind of feedback they would get  
22 from their subscribers and also how effective they  
23 would be at generating new subscribers.

24 So they were also a targeted prospect of  
25 buying our system and putting them out there in



1 the public. In fact, they had done something  
2 prior to that they told us about in airline clubs  
3 where they had installed PC's just on a --  
4 standard PC's on a desktop in airline clubs so  
5 that Prodigy subscribers could go over there and  
6 log on. And it created a lot of problems for them  
7 because a PC was not -- I mean, it wasn't  
8 hardened, if you will, for public access. And so  
9 that program didn't survive, but they liked the  
10 idea of a contained hardened public access  
11 product.

12 Q So when you contacted Prodigy on-line services  
13 with an offer to them to utilize your kiosk, you  
14 offered to them a device that would accept a  
15 credit card; is that correct?

16 A That's correct.

17 Q It would read that credit card?

18 A That's correct.

19 Q It could verify whether or not that credit card  
20 was valid?

21 A That's correct.

22 Q It would then report to the user whether their  
23 credit card had been accepted?

24 A That's correct.

25 Q It would then connect that user to the Prodigy



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1 on-line service?

2 A That's right.

3 Q And the machine could also determine how long the  
4 user was connected to the Prodigy on-line service?

5 A Sure.

6 Q It could bill them for that too on a pay-per-use  
7 basis?

8 A Yes.

9 Q It could then print out to a user a receipt for  
10 that pay-per-use purchase from your kiosk?

11 A That's right.

12 Q So the device you offered to Prodigy contained a  
13 central processing unit?

14 A Yes.

15 Q A telephone access node?

16 A Yes.

17 Q Internal modem coupled to the CPU?

18 A Yes.

19 Q Was an internal modem also coupled to the  
20 telephone access node?

21 A Yes.

22 Q Did it contain a display video monitor?

23 A Yes.

24 Q Was that coupled to the CPU?

25 A Yes.



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1 Q The display video monitor?

2 A Uh-huh.

3 Q Did it contain a keyboard for the user to use?

4 A Yes.

5 Q Was that keyboard coupled to the CPU?

6 A Yes.

7 Q Did it include a credit card reader swipe device?

8 A Yes.

9 Q Was that coupled to the CPU?

10 A Yes.

11 Q Would it accept payment from a user of the  
12 terminal if the subscriber, meaning Prodigy,  
13 elected to use that service?

14 A If a service provider like Prodigy, yes, elected  
15 to use that service, that is correct, that  
16 capability.

17 Q Was that capability offered to Prodigy --

18 A Yes.

19 Q -- in your sales offerings to them?

20 A Certainly.

21 Q Was there means on your terminal when Prodigy was  
22 installed on it for accessing on-line services?

23 A Yes.

24 Q So Prodigy provided the means for accessing a  
25 commercial on-line service?



1 A That is -- yes.

2 Q Was there software installed into the CPU of your  
3 machine to allow interface with a commercial  
4 on-line service?

5 A Yes.

6 Q Was there software to allow the CPU to interface  
7 with a credit card service center?

8 A Yes.

9 Q Was there a printer coupled to the CPU?

10 A Yes.

11 Q I would like to turn to Exhibit 3. Were you using  
12 Exhibit No. 3 in the year 1991 as sales material?

13 A Yes.

14 Q Exhibit 3, approximately halfway down the page,  
15 has a box titled TouchNet Network Control Center,  
16 and in that box is the line, and I'm quoting here,  
17 "Upload credit card billing data." Would you  
18 explain to us what that references?

19 A That references the network control center of the  
20 central management station communicating with the  
21 remote public access terminals and capturing, if  
22 you will, the credit card billings for that  
23 particular terminal and bringing those back to a  
24 central spot for further processing.

25 Q How was it getting that credit card information?





1 A It was dialing up to those remote terminals and it  
2 was logging on to each one of them and then  
3 basically doing a file transfer back.

4 Q And so this document therefore does not indicate  
5 realtime, if you will, verification of a credit  
6 card?

7 A No. If a terminal was going to realtime verify  
8 it, it would go out directly to a credit card  
9 processor and do that.

10 Q All right. And so this document indicates an  
11 after use batch downloading of credit card data?

12 A That's correct.

13 Q In the bottom third of the page of Exhibit 3 is a  
14 box titled on-line interactive database. What did  
15 TouchNet mean when it used that phrase?

16 A On-lining our active database really meant any  
17 kind of proprietary database system that our  
18 public terminals could access for pay-per-use  
19 information on demand. And so it could have been,  
20 as the bullet points underneath that category  
21 indicates, one form of an on-line interactive  
22 database was just a corporate database, my private  
23 database for employee information on-line, okay.  
24 Public access to CompuServe and Prodigy. Access  
25 to those proprietary on-line services. Access to



1 other types of information databases such as USA  
2 Today sport center for on-line sports information.

3 And then the last bullet is BBS, which is for  
4 bulletin board service applications, any kind of  
5 bulletin board, which was really, you know, a  
6 predecessor in many respects, you know, to the  
7 world wide web. Different types of information  
8 bulletin boards that our system could access.

9 MR. STITT: I think we can go on unless  
10 you have redirect.

11 FURTHER EXAMINATION

12 BY MR. POLASEK:

13 Q Yeah, I have some questions starting with what was  
14 marked as Exhibit No. 3. Let me start over. With  
15 regard to Exhibit 3, isn't it accurate that access  
16 to Prodigy and CompuServe was not available at the  
17 time that this document was prepared on the  
18 TouchNet terminal?

19 A That's correct.

20 Q Okay. So at the time that this document was  
21 prepared, you couldn't access Prodigy or  
22 CompuServe from a TouchNet terminal?

23 A In 1991, that's correct.

24 Q And this document -- again I think we have been  
25 through this -- this document itself does not



1 indicate that -- first let me back up. At this  
2 time, access to the internet was not available  
3 from a TouchNet terminal, correct?

4 A Correct.

5 Q And the document itself does not disclose on its  
6 face that a user could be billed on a pay as you  
7 go basis for access to CompuServe or Prodigy?

8 A I mean, it refers to the credit card billing data.  
9 I don't know why there would be credit card  
10 billing data if it couldn't accept a credit card.

11 Q I'm not disputing it may not have accepted that,  
12 it may have accepted a credit card. The credit  
13 card could be used to pay for faxes, correct?

14 A Correct.

15 Q And the reference to credit card billing data  
16 doesn't tell us that it is also to be used for a  
17 pay-as-you-go access to Prodigy or CompuServe much  
18 less the internet?

19 A The basic system, as I have already said --

20 Q Let's talk about the document.

21 A Well, that is why the credit card is on there,  
22 because the basic system accepts credit cards.

23 Q That's correct.

24 A So that's the basic fabric of the TouchNet  
25 terminal from day one in 1989. So I don't see how



1 -- I don't see how one could think that it would  
2 not -- these services we are talking about down  
3 here, they would not be able to be credit card  
4 enabled, so to speak.

5 Q As you said, some services are -- you are charged  
6 for some services as a user and some you are not,  
7 correct?

8 A Depending on the service provider, what they want  
9 to do.

10 Q Okay.

11 A Right. So it is really a decision that goes back  
12 to USA Today or whoever and says do you want to  
13 charge for that information or do you want to  
14 provide it as a free service as a form of  
15 advertising.

16 Q But this document itself does not say that a user  
17 is going to be charged for access to CompuServe or  
18 Prodigy?

19 A No, it doesn't specifically say those two  
20 services, no.

21 Q Okay, thank you. A few minutes ago in response to  
22 some questions from your attorney, Mr. Stitt, you  
23 testified that Prodigy was offered an alternative  
24 billing system. Do you recall that testimony?

25 A Yes.



1 Q Have you produced any documentation to us that  
2 would support your testimony?

3 A I think all of our documentation supports the  
4 testimony that every place we went there was like  
5 here is a credit card reader, here is a phone,  
6 here a laser printer, here is a scanner, and as a  
7 service provider, pick and choose what you wanted  
8 to use.

9 Q Let's back up even farther. You testified that  
10 Prodigy could have --

11 A Sure.

12 Q -- charged on a pay-per-use basis?

13 A A minute or a block of time or however they wanted  
14 to do it.

15 Q You are saying you offered that alternative to  
16 Prodigy?

17 A Yes, sure.

18 Q You are saying it is disclosed in the  
19 documentation that you produced to us?

20 A I think that -- yeah. I think, in fact, you will  
21 find in there references to Prodigy and credit  
22 card transactions and billing systems. I mean,  
23 one of our best -- unfortunately, none of us here  
24 or in this room right now are programmers, but  
25 programmers can look through the code and they can



1 determine what a system is capable for and where  
2 are the configurations, where are the flags to  
3 turn on and off different resources. And in that  
4 code there is Prodigy, there is credit cards,  
5 there is validation centers and there is flags.

6 Q You are right, none of us here are programmers and  
7 that's why I think, you know, since we haven't had  
8 access, seen this document --

9 A Sure.

10 Q -- I think I want some time to study the document  
11 before we take Mr. Vermeire's deposition, but that  
12 is another issue. Was it ever put in writing to  
13 Prodigy, the people at Prodigy that they could --  
14 that as an alternative billing system they could  
15 charge for pay-per-use access to Prodigy?

16 A I don't know if it is ever put in writing or not.  
17 I imagine -- I mean, we had several personal  
18 meetings with Prodigy, and I know that the  
19 discussion was certainly there about how do we  
20 introduce the service. And it was their belief  
21 they wanted to introduce the service at a  
22 no-charge basis, much like we are doing with our  
23 internet service at this point.

24 Q Who was at this discussion?

25 A Myself, John Murphy, and there was another



gentleman, you saw him in some of the article reprints, John Massey, and then we had a whole contingency of Prodigy people, a room full of them.

Q Can you give me any names?

A No, I can't offhand.

Q Do you keep minutes of the meeting, minutes of attendees?

A John keeps pretty good records on that on stuff like that. So I wouldn't be surprised if he knows several of the names.

Q Your testimony with regard to Prodigy concerned the 1993 time frame, correct?

A 1993 is when we finally did something with them, but we were marketing to them as well as we had a target market of those that we wanted to have buy the systems, which were primarily phone companies. And part of our other strategy was information service providers. And so the USA Today's, the OAG's, the Prodigy's, the American On-Lines, newspapers, publishers, etc., consumer reports, those were all part of people that we were talking to.

We had a person that specifically talked to those people, our director of information



1 services, who is no longer with us, but that was  
2 his role is to talk to information service  
3 providers, make them aware of what we are doing,  
4 determining how they wanted to work with us so  
5 that we could offer a more robust offering to the  
6 phone companies so they could see more clearly  
7 where their potential revenue sources were going  
8 to come from to pay for the terminals.

9 Q Perhaps you didn't understand my question. What I  
10 was trying to get at is when did these discussions  
11 take place?

12 A '92 sometime for sure.

13 Q At the time that these discussions took place in  
14 '92 sometime, if a user accessed Prodigy, were  
15 they able to get on the internet?

16 A No, no. Prodigy did not have access. They did  
17 not have an internet gateway out of Prodigy.

18 Q Who is the director of services that is no longer  
19 with TouchNet?

20 A His name was Rich Bercema (phonetic).

21 Q Do you know where he is located now?

22 A I haven't seen Rich in years.

23 Q Do you know if he is in Kansas or Missouri or --

24 A I think he might be still in Kansas.

25 Q Do you know where -- the last time that you had





1           talked to him or heard of him, do you know where  
2           he was residing?

3           A    No.

4           Q    Mr. Stitt also asked you some questions about  
5           Exhibit 23.

6           A    Okay.

7           Q    And more precisely, he referred you to page 3 of  
8           Exhibit 23, the information that is set forth  
9           under the category labeled other services. I  
10          believe it was your testimony that the billing at  
11          75 cents per minute was in reference to use of the  
12          on-line services?

13          A    That's correct.

14          Q    And the on-line services that were available were  
15          on the iNet system?

16          A    That and the e-mail, yes.

17          Q    And the iNet access was a Mediatel package,  
18          correct?

19          A    It wasn't a Mediatel. It was really a Bell  
20          Canada.

21          Q    Okay. And again, the iNet system did not enable  
22          one to get on the internet, did not have that  
23          access, did it?

24          A    No, it didn't have a gateway to the internet which  
25          wasn't available --



1 Q Okay.

2 A -- at that time.

3 Q Now, you indicated or you testified that there was  
4 some testing performed in Kansas with regard to  
5 those, to the terminals that were constructed for  
6 Mediatel?

7 A Sure.

8 Q When did this testing take place?

9 A In the fall of '92.

10 Q By whom?

11 A Dean Vermeire was the main lead developer. He was  
12 the developer on that software to interface with  
13 iNet.

14 Q Were records of his testing kept?

15 A I don't know.

16 Q Okay.

17 A This document 23 is the other side's review, their  
18 testing of our software. So this is an  
19 outstanding issue. So they are testing up there  
20 as well. So this is some of the things that they  
21 pointed out that we still needed to work on to  
22 complete the software.

23 Q Do you know if Mediatel actually billed users on a  
24 per-minute basis?

25 A I don't know.



1 Q All right.

2 A I do think they actually installed a couple in an  
3 airport.

4 Q In Canada?

5 A Yes.

6 MR. POLASEK: Pass the witness.

7 MR. STITT: All right.

8 (Witness excused.)  
9  
10

11 \_\_\_\_\_  
DANIEL J. TOUGHEY

12 Subscribed and sworn to before me this \_\_\_\_\_  
13 day of \_\_\_\_\_, 19 \_\_\_\_.

14 My commission expires \_\_\_\_\_.  
15  
16

17 \_\_\_\_\_  
Notary Public within and for  
18 \_\_\_\_\_ County, \_\_\_\_\_.  
19  
20  
21

22 Mettke, Richard P. vs. TouchNet Information Systems  
23  
24  
25



## CERTIFICATE

STATE OF MISSOURI     )  
                                  )   ss.  
COUNTY OF JACKSON    )

I, LYDIA HURLEY, Registered Professional Reporter and Notary Public, do certify that pursuant to Notice, at the law offices of Spencer, Fane, Britt & Browne, 1400 Commerce Bank Build, 1000 Walnut, in the City of Kansas City, in the County of Jackson and State of Missouri,

DANIEL J. TOUGHEY,

came before me, was duly sworn to testify the whole truth of his knowledge of the matters in controversy aforesaid, was examined and his examination then written in stenotype by me and afterward typed, and subscribed by the witness as hereinbefore set out, on the day in that behalf aforesaid; and said deposition is herewith returned.

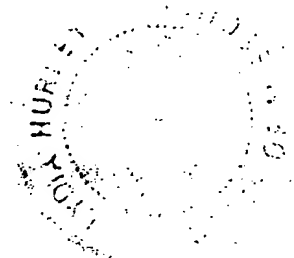
I further certify that I am not counsel, attorney or relative of either party, or clerk or stenographer of either party or of the attorney of either party, or otherwise interested in the event of this suit.

IN WITNESS WHEREOF, I have hereunto set my seal at my office in said County and State, this 23rd day of June, 1998.

My commission expires January 6, 2000.

*Lydia Hurley*  
\_\_\_\_\_  
Notary Public

RPR





June 23, 1998

Mr. Richard P. Stitt  
Spencer, Fane, Britt & Browne  
1000 Commerce Bank Building  
Suite 1400  
Kansas City, Missouri 64106

Re: Richard P. Mettke, vs. TouchNet Information  
Systems, Inc., No. 98-PT-596-E

Dear Mr. Stitt:

Enclosed you'll find the original signature pages and  
copies of the depositions of Daniel J. Toughey and  
John F. Murphy for them to read and sign.

If there are any changes necessary, please have  
the witnesses make those changes on the correction  
sheets which have also been provided for that purpose.

After the witnesses have read their transcript, please  
have them sign their original signature page and  
correction sheet before a notary public and return  
them to our office for filing.

If we have not received the signed documents within 30  
days of your receipt of them, the depositions will be  
filed without signature.

Thank you for your help in this matter.

Sincerely,

*Lydia Hurley*  
Lydia Hurley, RPR

cc: Mr. John T. Polasek

COUNTY OF JACKSON )  
 ) ss;  
STATE OF MISSOURI )

That, as of this date, the said witness and/or attorney of record have not returned the signed copy of the signature page pursuant to stipulation, and the deposition is herewith filed without the signature of the witness.

Notary Public in and for  
Jackson County, Missouri

**Carrie Turner**  
**Notary Public-Notary Seal**  
**State of Missouri**  
**Jackson County**  
**My Commission Exp. 06/18/2001**

1 Q All right.

2 A I do think they actually installed a couple in an  
3 airport.

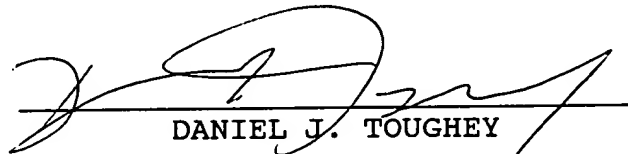
4 Q In Canada?

5 A Yes.

6 MR. POLASEK: Pass the witness.

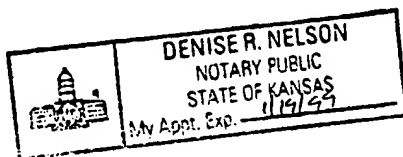
7 MR. STITT: All right.

8 (Witness excused.)

9  
10   
11 DANIEL J. TOUGHEY

12 Subscribed and sworn to before me this 27th  
13 day of July, 19 98.

14 My commission expires 1/19/99.



17 Denise R. Nelson  
18 Notary Public within and for  
19 Johnson County, Kansas.

20  
21  
22 Mettke, Richard P. vs. TouchNet Information Systems  
23  
24  
25

